

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)
)
VS) No. 3:21-mj-2956
)
RONALD McABEE)

BEFORE THE HONORABLE JEFFERY S. FRENZLEY,
MAGISTRATE JUDGE

TRANSCRIPT OF ELECTRONIC RECORDING

(via video conference)

August 26, 2021 and

September 8, 2021

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2 The above-styled cause came to be heard
3 on August 26, 2021 and September 8, 2021, before the
4 Hon. Jeffery S. Frensley, Magistrate Judge, when the
5 following proceedings were had to-wit.

6 **TRANSCRIPT OF ELECTRONIC RECORDING**

7 ***

8

9 THE COURT: Morning, everyone. Welcome.
10 We're here this morning in the matter of the
11 *United States of America versus Ronald McAbee*. It's
12 Case No. 3:21-mj-2956 here in the district.
13 Mr. McAbee is appearing as a result of an indictment
14 returned in the District of Columbia. The case number
15 in that matter is 1:21-cr-00035.

16 Mr. McAbee's present this morning by
17 video conference, along with his attorney, Mr. Gant.
18 And Mr. Kurtzman is here for the United States.
19 Mr. Murphy is on for pretrial services. There are
20 several other folks who appear on video conference as
21 well. I would just ask that, Mr. Kurtzman, Mr. Gant,
22 identify anyone that you have with you as well before
23 we get started.

24 I also want to let everyone know that my
25 telephone conference line is open for members of the

1 public who may be interested and would be available to
2 call in. That line is muted as to them, so we won't
3 hear anything from anybody, but the line is open and
4 available and this proceeding is accessible to the
5 public in that fashion.

6 Mr. Kurtzman, could you let me know who
7 else, if anyone, is appearing on the screen for the
8 government today?

9 MR. KURTZMAN: Your Honor, I believe the
10 two call-in icons that you see there on the screen are
11 my colleagues in the District of Columbia who are
12 handling Mr. McAbee's case, Benet Kearney and Colleen
13 Kukowski.

14 THE COURT: Very good, thank you. And
15 then, Mr. Gant, do you have anyone else appearing on
16 screen today?

17 MR. GANT: I have on the screen Ms. Sarah
18 McAbee, who will be my first witness. I do intend to
19 call two additional witnesses.

20 THE COURT: All right, very good. Thank
21 you. Okay. We had set this matter today for a
22 detention hearing. The Court's in receipt of the
23 Pretrial Services Report which I've reviewed. I
24 assume you've each received a copy of the report and
25 you can keep your copy at the completion of these

1 proceedings.

2 Before we go any further, Mr. Gant, did
3 you have a chance to speak with your client in advance
4 of these proceedings, and specifically did you-all
5 discuss proceeding today by video conference and does
6 he consent to do so?

7 MR. GANT: We have discussed that,
8 Your Honor, and he consents to proceed by video
9 conference.

10 THE COURT: All right, very good. Are
11 there any announcements before we begin and is the
12 government ready, Mr. Kurtzman?

13 MR. KURTZMAN: No announcements from
14 government, Your Honor, but we are ready to proceed.

15 THE COURT: All right, very good.

16 Mr. Gant, any announcements and are you
17 prepared to proceed at this time?

18 MR. GANT: No announcements, Your Honor.
19 We're ready to proceed.

20 THE COURT: All right, very good.
21 Mr. Kurtzman, I'll hear from the government.

22 MR. KURTZMAN: Your Honor the government
23 would like to call to the stand FBI Special Agent
24 Matthew Acker.

25 THE COURT: Okay. Special Agent Acker,

1 let me go ahead and swear you.

2 **MATTHEW ACKER**

3 called as a witness, after having been first duly
4 sworn, testified as follows:

5 THE COURT: If you could state your name
6 and spell your last for the Court, please.

7 THE WITNESS: Matthew Acker, A-c-k-e-r.

8 THE COURT: All right. Very good. Thank
9 you. You may ask, Mr. Kurtzman.

10 **DIRECT EXAMINATION**

11 BY MR. KURTZMAN:

12 Q. Agent Acker, where are you currently
13 employed?

14 A. I'm employed as a special agent with the
15 Federal Bureau of Investigation assigned to the
16 Knoxville division.

17 Q. And what are your duties and
18 responsibilities as a special agent?

19 A. Investigate violations of federal
20 criminal law.

21 Q. And in that role as a special agent, did
22 you become involved in the investigation in the events
23 that occurred at the United States Capitol on
24 January 6 of 2021?

25 A. Yes, I did.

1 Q. And how did you become involved in that
2 investigation?

3 A. I've had a few leads that have come out
4 of Washington to identify individuals. And as part of
5 this investigation, I became involved in late July
6 with notification from Washington field office that
7 the subject identified as 134AFO is residing in
8 Unionville, Tennessee, which is in Bedford County.

9 Q. And once you learned -- or once you got
10 that lead from the Washington field office, what did
11 you do next in the course of your investigation?

12 A. I conducted surveillance at that
13 residence to identify Mr. McAbee as living at that
14 residence and also to identify any potential
15 workplaces.

16 Q. Okay. And over the course of that
17 investigation, did you learn of any other information
18 to either confirm or deny whether Mr. McAbee was
19 present at the United States Capitol on January 6?

20 A. I did. Mr. McAbee's previous employment
21 was determined to be in Georgia with the Cherokee
22 County Sheriff's Office, and more recently starting in
23 November through March of this year, November of 2020
24 through March of 2021, he worked for the Williamson
25 County Sheriff's Office. And FBI agents conducted

1 interviews of employees that worked with Mr. McAbee at
2 both of those locations. They were shown photographs
3 of Mr. McAbee, and he was positively identified by
4 both employers as 134AFO coming from the US Capitol on
5 January 1 -- excuse me, January 6 of 2021.

6 Q. And a couple things there, you said he
7 was identified as 134AFO. Was that a way that
8 individuals caught on camera on January 6 were
9 characterized --

10 A. Yes.

11 Q. -- as part of the investigation?

12 A. Yes. He was published on the Internet
13 via the FBI US Capitol Violence as No. 134AFO.

14 Q. Okay. And so he was initially an unnamed
15 suspect and you, through your investigation, confirmed
16 that the unidentified suspect characterized as 134AFO
17 was, in fact, Mr. McAbee?

18 A. Yes.

19 Q. And you also mentioned his prior
20 employment. So at the time of the events at the
21 Capitol on January 6, 2021, who was Mr. McAbee
22 employed by?

23 A. He was employed by the Williamson County
24 Sheriff's Office.

25 Q. Okay. Agent Acker, over the course of

1 your investigation, did you review body camera footage
2 of events that occurred in what's known as the archway
3 of the United States Capitol?

4 A. Yes, I did.

5 Q. And were you just given clips of that or
6 were you given sort of the full body cam footage from
7 certain officers to assist in your investigation?

8 A. I was able to download what I believe to
9 be the full body cam footage starting with the
10 officers before they made their way to the archway.

11 Q. And then in preparation for this hearing
12 today, did you and I review particular clips of those
13 body camera -- of that body camera footage for
14 particular officers?

15 A. Yes, we have.

16 Q. Did those clips appear to accurately
17 represent what you saw on the unedited or unclipped
18 footage of that body camera?

19 A. Yes, they do.

20 Q. Getting a little more specific, did you
21 review the body camera footage of a law enforcement
22 officer identified by his initials as AW?

23 A. Yes, I have.

24 Q. And that body camera footage, more
25 specifically the approximately two-minute clip, does

1 that appear to be consistent with AW's full body
2 camera footage that you've reviewed?

3 A. Yes.

4 Q. And in the course of your investigation
5 outside of just the body camera footage, have you
6 learned what happened to AW in the vicinity of the
7 archway on January 6 at around 4:28 in the afternoon?

8 A. I've reviewed interview 302s of
9 Officer AW.

10 Q. And in those 302s did Officer AW describe
11 what occurred to him as the crowd pushed into the
12 archway somewhere between 4:25 and 4:32?

13 A. Yes, he did.

14 Q. And what did he describe as happening to
15 him during that period?

16 A. He was physically struck and knocked to
17 the ground. I believe he said his helmet was removed
18 from his head, and he was eventually pulled down the
19 stairways in front of the archway of the US Capitol.

20 Q. And other items of equipment were taken
21 from him during that assault; is that right?

22 A. That's correct. I believe his baton and
23 his cell phone and his gas mask.

24 MR. KURTZMAN: Your Honor, at this time
25 based on the testimony of Agent Acker, I'd move to

1 admit the video footage provided to defense and the
2 Court entitled AW BWC clip. We'd move to admit that
3 video footage as Exhibit 1 and then play it for the
4 witness.

5 THE COURT: All right. It will be
6 admitted and you may play it.

7 (Government Exhibit No. 1 was admitted.)

8 BY MR. KURTZMAN:

9 Q. And, Agent Acker, are you able to see the
10 beginning of that video?

11 A. Yes, I am.

12 Q. Agent Acker, I'm going to pause and ask a
13 question as we look at this. At this point in the
14 video, can you tell AW's position in the archway, i.e.
15 is he standing or is he on the ground?

16 A. He appears to be on the ground.

17 Q. Okay. So from the body camera footage,
18 he's on his back with his body camera which is more
19 than likely chest mounted and pointed up?

20 A. Correct, it would be pointed up at the
21 archway and the sky.

22 Q. And then, Agent Acker, an individual with
23 a red hat and sunglasses just appeared on the left
24 side of the screen. Have you been able to determine
25 who that individual is?

1 A. Yes. That is Mr. McAbee.

2 Q. And based on your review of the video,
3 can you tell what he's doing right at this moment?

4 A. At this time in the video, it appears
5 that he is reaching down towards the ground.

6 Q. And -- I'll hold that question. I'll
7 play the video a little further.

8 Agent Acker, what does it appear that
9 Mr. McAbee comes up from the ground with?

10 A. As he stands back up, it appears he has a
11 black baton in his right hand.

12 Q. And do you believe when he was leaning
13 down to the ground it was to pick up that black
14 baton?

15 MR. GANT: Objection. What he believes
16 as opposed to what he saw, two different things. It's
17 supposed to be a factual determination. Did he see it
18 or he didn't.

19 THE COURT: Mr. Kurtzman.

20 MR. KURTZMAN: Your Honor, I can ask it
21 differently.

22 BY MR. KURTZMAN:

23 Q. Agent Acker, in what you reviewed on the
24 video, did Mr. McAbee have that baton before he knelt
25 down to the ground?

1 A. I did not see it in his hand before he
2 knelt down to the ground.

3 Q. When he came up from the ground, did you
4 see the baton in his hand?

5 A. Yes. The baton is in his right hand as
6 he stands back upright.

7 Q. And, Agent Acker, just to provide context
8 of the video, the individual we see standing above
9 AW's body worn camera right now pointing at the police
10 officers, is that Mr. McAbee still?

11 A. Yes, it is.

12 Q. And, Agent Acker, did your investigation
13 determine the individual immediately over AW's
14 body camera at this moment?

15 A. Yes, it has. That is the body armor worn
16 by Mr. McAbee on January 6.

17 Q. Okay. So a tactical -- when you say body
18 armor, a tactical vest likely with plates worn by law
19 enforcement and the military?

20 A. Correct, yes.

21 Q. And those -- those neon what appear to be
22 sleeves pushing up on Mr. McAbee, do you know what
23 that is?

MR. GANT: Judge, I object to that.

25 There's no indication, no motion to suggest that he's

1 pushing up anything.

2 THE COURT: Mr. Kurtzman, restate your
3 question.

4 BY MR. KURTZMAN:

5 Q. Agent Acker, what is the yellow or neon
6 figure we see on the screen right now?

7 A. Those are the sleeves on the left and
8 right arm of Officer AW.

9 Q. Who is currently on his back in this
10 portion of the video; is that right?

11 A. That is correct.

12 Q. Agent Acker, can you identify the patches
13 that are on Mr. McAbee's tactical vest?

14 A. Yes. The patch appearing on the left
15 side of the screen is commonly referred to as a
16 3 percent patch, which is three Roman numerals circled
17 by 13 stars, and the patch on the right side of the
18 screen reads Sheriff.

19 Q. And are you aware of any meaning or
20 significance behind that 3 percent patch you described
21 on the left?

22 A. The meaning behind the 3 percent patch
23 goes back to the Revolutionary War era and is, in
24 essence, a description of 3 percent of US people at
25 that time fought against the British government for

1 independence.

2 Q. Agent Acker, do you see that coming out
3 of the -- the neon figures on the screen right now,
4 are those still AW's arms?

5 MR. GANT: Judge, again, excuse me,
6 objection. The question is real simple. Whether or
7 not he knows what those neon jacket or arms are. By
8 asking him are these the arms of AW suggests the
9 answer. I object to the leading nature of the
10 question.

11 THE COURT: Overruled. I'll allow that.
12 BY MR. KURTZMAN:

13 Q. Agent Acker, I'll ask you again, what do
14 you see on the screen in front of you right now?

15 A. In this picture, Mr. McAbee is still on
16 top of Officer AW. You can see Officer AW's right
17 hand and his right arm and his left hand and left arm.
18 At least that's the body armor worn by Mr. McAbee.

19 Q. So the right hand is on the right side of
20 the screen there near Mr. McAbee's chest or shoulder?

21 A. Correct.

22 Q. And where is the left hand on the screen?

23 A. The left hand is in the center of
24 Mr. McAbee's (indiscernible) and arm and in the center
25 of the screen.

1 Q. I apologize, the video started to replay.
2 Agent Acker, in -- were you able to review the photos
3 that were placed in the detention motion in this
4 matter?

5 A. I have, yes.

6 Q. And on page 8 there's two photos, one
7 that we've looked at in the video and another shot
8 from a different vantage point. Do you know what
9 the -- and the one shot from a different vantage point
10 has a red circle on it. Can you describe based on
11 your investigation what's happening in that photo?

12 MR. GANT: Objection. Objection.

13 THE COURT: Go ahead, Mr. Gant.

14 MR. GANT: Counsel is making reference, I
15 assume, to Docket Entry No. 6.

16 THE COURT: I think that's correct.

17 MR. GANT: And maybe I heard him wrong,
18 maybe I wasn't listening, but he said something about
19 this document being used at the detention hearing?
20 Did I mishear him?

21 THE COURT: I think so, Mr. Gant. I
22 think he's just asking him to make some
23 identifications of the photographs that are in that
24 document at page 6. Is that right, Mr. Kurtzman?

25 MR. KURTZMAN: That's correct,

1 Your Honor. It's page 8, I believe.

2 THE COURT: I'm sorry, page 8.

3 MR. GANT: Very well.

4 THE COURT: You can ask.

5 BY MR. KURTZMAN:

6 Q. Agent Acker, I think before I brought
7 your attention to page 8 and the photograph with the
8 red circle on it that's a different vantage point from
9 the video we just observed in Exhibit 1. Based on
10 your investigation, what's happening in that picture?

11 A. That is a still picture from a video
12 taken at the same time as the body worn camera video
13 that we just watched. At that point in time
14 Officer AW has been pulled down the stairs and
15 Mr. McAbee is on top of him.

16 Q. Agent Acker, in the course of your
17 investigation, did you review body camera footage from
18 a law enforcement officer going by the initials of CM?

19 A. Yes, I have.

20 Q. And, again, did you get the entirety of
21 that officer's body camera from January 6?

22 A. I did.

23 Q. And did you review the approximately
24 two-minute clip that counsel shared with the Court and
25 the defense counsel of CM's body worn camera footage?

1 A. Yes, I have.

2 Q. And does that clip appear to be
3 consistent with the full version of the body camera
4 footage?

5 A. Yes, it does.

6 Q. And does it provide an accurate
7 representation of the events that occurred in the
8 vicinity of the archway of the United States Capitol
9 on January 6?

10 A. Yes, it does.

11 MR. KURTZMAN: Your Honor, at this time
12 the government would move to admit Exhibit 2 and play
13 it for the witness, at least a portion of it.

14 THE COURT: And that's the portion of the
15 CM body cam clip?

16 MR. KURTZMAN: That's correct,
17 Your Honor. At approximately the 1:07 mark the body
18 camera footage is -- I don't -- there's nothing
19 visible in the body cam footage after the 1:07 mark.

20 THE COURT: All right. It will be
21 admitted and you may play it.

22 (Government Exhibit No. 2 was admitted.)
23 BY MR. KURTZMAN:

24 Q. Agent Acker, in the video there is an
25 individual wearing what appears to be a neon jacket.

1 In your investigation, can you determine who that is?

2 THE COURT: Mr. Kurtzman, are you sharing
3 your screen at this time or are you just asking
4 generally?

5 MR. KURTZMAN: I apologize, Your Honor.

6 I was not. I can go back and I will replay it.

7 BY MR. KURTZMAN:

8 Q. Agent Acker, are you able to see the
9 video now?

10 A. Yes, I am. At 16:26:50.

11 Q. Agent Acker, in the center of the screen
12 that's an individual with a gas mask, gloves and a
13 neon jacket. Have you been able to identify who that
14 individual is during the course of your investigation?

15 A. Yes. That is Officer AW on his back at
16 the archway.

17 Q. And, Agent Acker, can you identify the
18 individual standing on the screen right now on the
19 left with what appears to be a vest that says
20 Different Generation on it?

21 A. Yes. That is Mr. McAbee.

22 Q. And can you see Mr. McAbee's hands at the
23 moment?

24 A. I can. His left hand, which is in a
25 black glove with a metal knuckle is near his face,

1 potentially holding his hat, and his right hand, same
2 type of a glove on, is holding a black baton.

3 Q. And so you're familiar with the type of
4 gloves he's wearing?

5 A. Yes, I am.

6 Q. Can you describe those for us again, what
7 they are?

8 A. They're black leather gloves with -- they
9 have metal on the knuckles.

10 Q. I want to go back in this exhibit for...
11 This is the 16:27:35 mark.

12 A. Yes.

13 Q. Agent Acker, what is Mr. McAbee doing at
14 the moment in this video?

15 A. He is reaching down and grabbing the left
16 leg of Officer AW.

17 Q. And in your review of this video and
18 other videos, did you determine what he -- what he's
19 about to do?

20 MR. GANT: Objection as to what it is
21 he's about to do. How on earth would he know that?

22 THE COURT: Sustained. You can ask what
23 happened or what happened next, but what he's about to
24 do --

25 MR. KURTZMAN: (indiscernible).

1 BY MR. KURTZMAN:

2 Q. What happens next?

3 A. At this point in the video, Mr. McAbee
4 reaches down, grabs Officer AW's left leg and pulls
5 him away from the other officers inside the archway.
6 As the video plays before and after, you can see other
7 uniformed officers trying to pull Officer AW back into
8 the archway with the other officers.

9 Q. Agent Acker, have you during the course
10 of your investigation received body camera footage
11 from a law enforcement officer by the last name of
12 Powell?

13 A. Yes.

14 Q. And did you receive just a clip of that
15 or did you receive all of that officer's body camera
16 footage?

17 A. I received both the original download and
18 then the video that we've reviewed.

19 Q. Okay. And does the approximately
20 one-minute clip of the body camera footage we
21 reviewed, is that consistent with what you saw on the
22 full recording from the body camera?

23 A. Yes, it is.

24 Q. And is it an accurate representation
25 based on your review of the full camera footage of the

1 events that occurred on the archway of the
2 United States Capitol around 4:27 in the afternoon on
3 January 6?

4 A. Yes, it is.

5 MR. KURTZMAN: Your Honor, the government
6 would move to admit the body camera footage which has
7 been shared to the Court and defense counsel that is
8 labeled Powell_16_27_10-16 and then play that for the
9 witness.

10 THE COURT: All right. It will be
11 admitted and you can share it.

12 (Government Exhibit No. 3 was admitted.)

13 BY MR. KURTZMAN:

14 Q. Agent Acker, is Mr. McAbee on the screen
15 at the moment?

16 A. I'm not able to see the video at the
17 moment.

18 Q. I apologize. Let me try that again.
19 Agent Acker, are you able to see the video now?

20 A. Yes, I'm able to see the video at the
21 16:27:09 mark.

22 Q. Agent Acker, just for context, there's an
23 individual that appears to be on the ground with their
24 legs and feet visible in the center of the screen.
25 Based on your investigation, do you know who that is?

1 A. Yes, at the center bottom portion of the
2 screen, that individual's Officer AW laying on his
3 back.

4 Q. And, Agent Acker, can you identify the
5 defendant on the screen at the moment?

6 A. Yes, I can. He's in the left side of the
7 screen wearing a red hat, black shirt, and you can see
8 his left hand has the black leather glove with the
9 metal knuckles on it and blue jeans.

10 Q. And, Agent Acker, during the course of
11 your investigation did you receive body camera footage
12 from a law enforcement officer by the last name of
13 Sajumon?

14 A. Yes, I have.

15 Q. And did you receive both the full
16 body camera and then a clip that you and I reviewed
17 together?

18 A. Yes, I did.

19 Q. Does the clip that you and I reviewed, is
20 that consistent with the full recording of Officer
21 Sajumon's body camera footage from January 6?

22 A. Yes, it is.

23 MR. KURTZMAN: Your Honor, the government
24 would move to admit the video labeled
25 Sajumon_26_27_28-16 as Exhibit 4 and play it for the

1 witness.

2 THE COURT: All right. It will be
3 admitted and you can share that.

4 (Government Exhibit No. 4 was admitted.)

5 BY MR. KURTZMAN:

6 Q. Agent Acker, are you able to see the
7 video?

8 A. Yes, I am.

9 Q. And just for context, Agent Acker, based
10 on your review of the full body camera footage, were
11 you able to determine approximately where Officer
12 Sajumon was positioned on January 6 at approximately
13 16:27?

14 A. From this image in the video, Officer
15 Sajumon appears to be positioned inside the archway at
16 the US Capitol. Looking outward, he would be on the
17 left side of the archway.

18 Q. And, Agent Acker, can you identify the
19 defendant on the video right now?

20 A. Yes. Mr. McAbee is in the center of the
21 screen wearing a red (indiscernible) Brave hat,
22 sunglasses, black shirt and a black vest.

23 Q. And, Agent Acker, in your review of the
24 video, both this vantage point and other vantage
25 points, what just occurred?

1 A. Mr. McAbee engaged in a altercation with
2 an officer that included him shoving the officer
3 backwards.

4 Q. And, Agent Acker, what happened to that
5 officer after this physical altercation with the
6 defendant?

7 A. Which officer? The one standing in front
8 of us now?

9 Q. Yes.

10 A. Another individual is seen assaulting
11 this officer.

12 Q. And that came directly on the -- directly
13 following the defendant, Mr. McAbee's, engagement with
14 that officer?

15 A. That is correct.

16 MR. GANT: Excuse me, objection.

17 Leading. Move that that answer be stricken.

18 THE COURT: Overruled. I'll let you --
19 I'll let him answer it.

20 THE WITNESS: Yes, from the position of
21 the video, Mr. McAbee is engaged with this officer,
22 and then the other -- the other individual is a white
23 male with a beard. He also begins assaulting the same
24 officer.

25

1 BY MR. KURTZMAN:

2 Q. Agent Acker, in your preparation for the
3 hearing today, did you review a video footage taken
4 from a different angle of the archway on January 6?

5 A. Yes, I have.

6 Q. And based on your review of the body worn
7 camera footage in other -- other portions of your
8 investigation, does that -- what has been labeled as
9 the Storyful video, is that consistent with the body
10 worn camera footage video from that day?

11 A. It's consistent in the time period. The
12 vantage point of the video is facing -- it's from the
13 outside of the US Capitol from where the crowd is
14 facing the archway where the officers are standing.

15 Q. Is it consistent with respect to the
16 events it depicts?

17 A. That's correct. It is, yes.

18 Q. Would it be fair to say that it's just a
19 different vantage point of the same events?

20 A. Yes.

21 MR. KURTZMAN: Your Honor, at this time
22 the government would move to admit the video provided
23 to defense counsel and the Court which is labeled
24 Storyful video and then play it for the witness.

25 THE COURT: All right. It will be

1 admitted and you can share it.

2 (Government Exhibit No. 5 was admitted.)

3 BY MR. KURTZMAN:

4 Q. Agent Acker, are you able to see the
5 video?

6 A. Yes, I am.

7 Q. And can you identify for the Court what
8 you've previously described as the archway?

9 A. The archway is in the center of the
10 screen. You can see on the top of the screen there
11 are people with their legs over the railing of the
12 archway. To the left of the archway is a individual
13 standing up. It appears he's got a knit hat on.

14 Q. And for perspective, the body worn camera
15 footage admitted as Exhibits 1 through 4, where was
16 that taken from?

17 A. It is taken from the general vicinity of
18 the officer that you can see standing in the middle of
19 the screen with riot gear on.

20 Q. Agent Acker, in the still portion of the
21 video that's displayed right now, are you able to
22 identify where the defendant, Mr. McAbee, is?

23 A. Yes, I am. He is on the right side of
24 the screen bent over, you can see his left glove
25 holding the railing, the top of his hat is shown below

1 the railing. Exact -- right to the right of the
2 entrance to the archway.

3 Q. Agent Acker, what did the defendant just
4 to?

5 A. The defendant just stood up, and it
6 appeared that he was hit in the head with some item.
7 And in -- from the other video we have seen at the
8 same time, he has a black baton in his right hand.

9 Q. Agent Acker, we'll call it the center
10 left of the screen, there's an individual pulling on
11 someone by the foot. Do you know who that foot and
12 leg belongs to?

13 A. Yes, I do. That is the right leg of
14 Officer AW.

15 Q. And, Agent Acker, can you identify the
16 defendant in the video at the moment?

17 A. Yes. The defendant is standing in the
18 center of the archway facing inwards at the officer
19 wearing a red hat, black tactical vest, long-sleeved
20 black shirt and blue jeans.

21 Q. And in your review of the video, what
22 happens next?

23 A. As the video continues to play, the white
24 male, unidentified white male that is in the center of
25 the screen down the railing is still holding onto the

1 right leg of Officer AW. He is then joined by two or
2 three other individuals who also appear to grab ahold
3 of the legs of Officer AW, and Officer AW is then
4 dragged down the stairway with the defendant,
5 Mr. McAbee, on top of him.

6 Q. And, Agent Acker, following the
7 defendant's arrest in this matter, did you participate
8 in the interview of him?

9 A. Yes, I did.

10 Q. And did he identify himself as the
11 individual that you've identified as Mr. McAbee
12 throughout Exhibits 1 through 5?

13 A. Yes, he did. I showed him a variety of
14 images of that same individual with the red hat,
15 sunglasses, black tactical vest, long-sleeved black
16 shirt and blue jeans, and he advised verbally that was
17 him and he initialed and dated the images stating that
18 that also was him.

19 Q. And did Mr. McAbee indicate whether or
20 not the officer -- one of the -- I believe Officer AW
21 would have felt that he was assaulted that day by
22 Mr. McAbee?

23 A. During the course of the interview he
24 said that that officer that was on the ground probably
25 would have felt like he was holding him down as they

1 went down the stairwell. And he also advised and
2 said, yes, he did strike the other officers in the
3 face, that he pushed and double pushed them.

4 MR. KURTZMAN: Your Honor, those are all
5 the questions the government has at the moment.

6 THE COURT: Okay. Mr. Gant,
7 cross-examination.

8 MR. GANT: Yes, Your Honor.

CROSS-EXAMINATION

10 BY MR. GANT:

11 Q. Mr. Acker, tell us, if you would, please,
12 where you are physically right now.

13 A. Currently I'm at the Tullahoma office of
14 the FBI.

15 Q. And there at the Tullahoma office of the
16 FBI, do you have a file on Mr. McAbee in front of you?

17 A. It's not in front of me. I have a
18 printed 302 of the interview that I wrote, and I have
19 a couple of the documents that Mr. Kurtzman prepared.

20 Q. And the documents that you say
21 Mr. Kurtzman prepared, what documents are you
22 referring to?

23 A. The detention hearing and just some notes
24 for the review of the videos.

25 O. And when you say detention hearing, I'm a

1 little confused. Are you talking about the
2 government's motion for pretrial detention?

3 A. Yes, sir, the government's motion for
4 pretrial detention. Yes. And I reviewed the image on
5 page 8 from that motion -- from that document earlier.

6 Q. And I take it at some point in time
7 before today you and Mr. Kurtzman talked and prepared
8 for this hearing, did you not?

9 A. That is correct.

10 Q. Being the professional that you are, I
11 assume that at the time you talked with Mr. Kurtzman,
12 you provided him with all the information that you had
13 that he would (indiscernible); is that right?

14 A. Correct.

15 Q. And I take it you've talked extensively,
16 Mr. Acker, about these various videos, have you not?

17 A. We have, yes.

18 Q. And let's just -- let's take them, if we
19 can, one at a time.

20 A. Okay.

21 Q. The first video was the BWC video; is
22 that right?

23 A. That's correct.

24 Q. Now, you have said to His Honor in
25 response to questions put to you by Mr. Kurtzman that

1 this was merely a clip of a larger footage; is that
2 right?

3 A. Correct. The videos that were played
4 today are segments --

5 Q. I'm talking about one particular video.
6 I'm talking about BWC, was that a clip --

7 MR. KURTZMAN: Your Honor -- Your Honor,
8 I'm going to object. There's multiple videos labeled
9 BWC. Exhibits 1 through 4 are all body worn camera,
10 so if Mr. Gant wants to talk about one video, he needs
11 to identify which video he's talking about.

12 THE COURT: I think he did.

13 MR. KURTZMAN: He did not, Your Honor.
14 He called it the BWC video.

15 THE COURT: That was Exhibit 1.

16 MR. KURTZMAN: Right. And Exhibit 2 is a
17 BWC video and Exhibit 3 is a BWC. BWC just stands for
18 body worn camera. Each of the exhibits are identified
19 by the law enforcement officer wearing that body worn
20 camera. So if he can --

21 THE COURT: Ask your question again,
22 Mr. Gant.

23 BY MR. GANT:

24 Q. Mr. Acker, do you understand that you and
25 I are talking about the very first video that was

1 shown today. Can we understand that?

2 A. The body worn camera of Officer AW.

3 Q. Yes, sir.

4 A. Yes, I understand that.

5 Q. That's the one that I'd like to talk to
6 you about, and that's the only one I want to talk to
7 you about right now. Do you understand that?

8 A. I understand.

9 Q. That video that was shown today,
10 Exhibit No. 1, was a clip from a larger footage; is
11 that right?

12 A. Correct.

13 Q. You have said in response to
14 Mr. Kurtzman's questions that you had reviewed the
15 other footage, the larger footage; is that right?

16 A. That is right.

17 Q. And after your review of that footage,
18 you then, either on your own or pursuant to some
19 direction, prepared a clip; is that right?

20 A. No, I did not prepare the clip. What I
21 had was a download of the officer's body worn camera.
22 What was prepared was a segment in time of that
23 officer's body worn camera where Mr. McAbee is at the
24 archway.

25 Q. Okay. And that portion of the body worn

1 camera of AW that shows Mr. McAbee, that was a small
2 portion of a larger portion or footage of AW's body
3 worn camera; is that right?

4 A. There was video from his body worn camera
5 before Mr. McAbee was visible in the screen on the
6 recording and then there was also video after
7 Mr. McAbee is no longer in the screen.

8 Q. Thank you, sir. Now, you viewed the
9 entire footage of AW's body worn camera, and after
10 viewing that, there was a decision made to take that
11 portion of the footage that showed Mr. McAbee; is that
12 right?

13 A. Yes, that's correct.

14 Q. Thank you. And I take it that you
15 reviewed the body worn camera or body worn footage
16 from AW's camera in your preparation to testify at the
17 hearing today; would that be fair to say?

18 A. I did not view it in its entirety. I
19 have in preparation for today, I have viewed it in its
20 entirety before.

21 Q. Okay. Somebody selected the particular
22 clip that was shown today; isn't that right?

23 A. That video that's shown is relevant to
24 the --

25 Q. Maybe you didn't hear my question.

1 Somebody decided that the particular clip that was
2 shown today was the clip to be taken out of the entire
3 footage of Mr. AW's body worn camera; isn't that
4 right?

5 MR. KURTZMAN: Your Honor, I'm going to
6 object. We are nowhere near anything relevant towards
7 the matter of detention. We've gone on I think now
8 five minutes on the full footage or the clip. And I
9 don't see it approaching relevancy.

10 THE COURT: Overruled.

11 MR. GANT: (indiscernible).

12 THE COURT: Overruled. You can answer
13 the question, but let's move on, Mr. Gant, and get to
14 the point.

15 THE WITNESS: Could you please restate
16 the question?

17 BY MR. GANT:

18 Q. Somebody decided out of the entire
19 footage from AW's body worn camera to take that piece
20 that showed Mr. McAbee.

21 A. Yes, the video that was shown had
22 Mr. McAbee in it, and that is a portion of the video
23 of his entire body worn camera.

24 Q. Who made the decision to take that piece
25 that was shown today?

1 MR. KURTZMAN: Your Honor, I'm going to
2 object. We're still nowhere near relevancy.

3 MR. GANT: Judge, may I tell where you
4 I'm going?

5 THE COURT: Yes, please.

6 MR. GANT: Mr. Acker is testifying about
7 viewing footage other than the footage that was shown
8 today, three different clips or four different clips,
9 all right. And at some point in time somebody
10 decided, well, we're going to show this piece. If he
11 viewed the entire footage or each one of these four in
12 his preparation to testify today, I am entitled to
13 view that. That has been used as a basis for his
14 testimony. I'm entitled to see it.

15 THE COURT: So I guess what you're --
16 you're trying to establish a foundation that he
17 reviewed the entire footage, and then you think you
18 ought to be able to see it before you go forward with
19 his cross-examination.

20 MR. GANT: Yes, Judge, primarily because
21 there are portions or may well be portions of at least
22 one that I've seen already that shows some conduct of
23 Mr. McAbee after, supposedly -- for example,
24 supposedly he drug somebody down the steps. Well,
25 there is some footage showing conduct that certainly

1 might suggest that he was doing something other than
2 hurting somebody. But the government gets a chance to
3 cherry pick that portion of the entire footage and
4 present to you without giving me an opportunity to
5 look at the footage and determine whether or not
6 there's something in there that is at least, at least
7 supportive of an argument that Mr. McAbee didn't
8 engage in the kind of conduct that's set out in that
9 tape.

10 THE COURT: Okay, Mr. Kurtzman. Go
11 ahead. I'm sorry. Mr. Gant, go ahead.

12 MR. GANT: Judge, if what Mr. Acker has
13 just testified about and had we not seen these clips
14 but he just gave testimony about those clips and it
15 was in the form of -- in some written form, I would be
16 entitled to see it and review it. That's the basis,
17 Judge. That's where I'm going.

18 THE COURT: All right. Mr. Kurtzman,
19 what do you say? I think you're muted, Mr. Kurtzman,
20 I can't hear you.

21 MR. KURTZMAN: Sorry. Your Honor, I'm a
22 little confused as to what the point is. Mr. Gant
23 says that there's footage that he's aware of that
24 shows what he has deemed good conduct of Mr. McAbee.
25 Well, unless he's got footage from somewhere else, I

1 gave him that. And with respect to viewing the
2 entirety of the videos, I don't have those myself and
3 I've not viewed them myself. I figured it was
4 probably more efficient for the Court, for Mr. Gant,
5 for his client if I played the portion of the videos
6 where he is present.

7 Now, if he wants the entirety of all four
8 officers' body worn camera footage, we'll need to, I
9 think, take a break from this hearing. I'll need to
10 get it from Agent Acker, I'll need to review the
11 entirety of all four officers' body camera footage,
12 certainly allow Mr. Gant that time to review, which it
13 sounds like he wants. And so I would ask that we
14 recess if that is -- that is his desire.

15 MR. GANT: That is my desire.

16 THE COURT: So you-all are saying that
17 you want to recess and reset this hearing in order for
18 the defense to be provided with these additional
19 videos?

20 MR. GANT: (indiscernible).

21 THE COURT: Sorry, hang on. Mr. Gant, go
22 ahead.

23 MR. GANT: Judge, that's what I'm asking.

24 THE COURT: All right. Mr. Kurtzman,
25 what's the government say about that?

1 MR. KURTZMAN: Your Honor, I think that's
2 a waste of all of our time, but if that's what
3 Mr. Gant wants and the Court wants to grant it to him,
4 I'm fine to proceed that way and we can -- we can all
5 look at our schedules and see when we can reconvene.

6 THE COURT: All right. Mr. Gant, if
7 that's what you want to do, you want to reset this
8 matter to another day and get that information?

9 MR. GANT: Yes, sir.

10 THE COURT: Okay. Well, you've made the
11 request to continue the hearing. The government has
12 indicated it doesn't oppose that request. You've
13 requested specific video information. The
14 government's indicated it's willing to provide that
15 information.

16 So I think by agreement of the parties,
17 I'll continue the hearing. Let's look at another time
18 to do this. I guess first question I have,
19 Mr. Kurtzman, is tell me what you think the timetable
20 is going to be for you to collect the full
21 information, review it and provide it to Mr. Gant.
22 Today's Thursday.

23 MR. KURTZMAN: Your Honor, by agreement
24 of the parties, I may not have stated my position.

25 THE COURT: Well, you don't have an

1 objection is what you said. I apologize.

2 MR. KURTZMAN: The futility of my
3 objection might be limited to the extent I would have
4 one, but I think it's unnecessary, but I'm happy to do
5 it.

6 THE COURT: Okay.

7 MR. KURTZMAN: So how long -- I need to
8 get with Agent Acker. I don't even have those videos,
9 so I would need to get them first. I would need to
10 review them. I don't even know how long they are. I
11 would assume they're relatively lengthy being that
12 they document the entirety of those officers' days.

13 THE COURT: We've got Special Agent Acker
14 here, why don't we try to get a little information.
15 Is that okay? First of all, Mr. -- Special Agent
16 Acker, do you have the full videos?

17 THE WITNESS: I've downloaded copies of
18 the videos that are contained by the Washington field
19 office from that date.

20 THE COURT: Okay. And do you have a
21 ballpark idea --

22 THE WITNESS: It's quite large. I
23 downloaded them through an Internet link that was sent
24 from the US Attorney's Office there and that should
25 not be a problem to share it locally with the

1 Nashville office.

2 THE COURT: Do you have a --

3 THE WITNESS: They are lengthy. Some of
4 them are very lengthy.

5 THE COURT: Do you have enough any idea
6 how long -- are we talking about 10 hours, 12 hours,
7 two hours?

8 THE WITNESS: I believe Sajumon's video
9 is the longest. The other ones are, from what I have
10 viewed are just a few minutes beyond -- I would say 10
11 to 20 minutes would be my best guess at the length on
12 them on the other ones.

13 THE COURT: All right, fair enough.
14 Okay. Do you think you can get those to Mr. Kurtzman
15 by tomorrow?

16 THE WITNESS: That should not -- I can
17 probably share the link today and he can download them
18 today.

19 THE COURT: Okay. And, Mr. Kurtzman, how
20 long do you think you need, a day or two?

21 MR. KURTZMAN: At least, Your Honor. As
22 you know, I've got another matters as well --

23 THE COURT: I understand.

24 MR. KURTZMAN: -- that take up some time.
25 So somewhat unforecasted --

1 THE COURT: I understand.

2 MR. KURTZMAN: -- to review 14 hours of
3 body worn camera footage. So it's tough to say.
4 Probably sometime early next week I can be done with
5 them and get them over to Mr. Gant.

6 THE COURT: Okay. Sounds like we need to
7 be looking at trying to reset this sometime toward the
8 end of next week. I think maybe Friday. That's the
9 3rd, Friday the 3rd. Mr. Gant?

10 MR. GANT: Judge, I'll make it work.

11 THE COURT: 1 o'clock.

12 MR. KURTZMAN: Your Honor, I have a
13 pretrial conference at 1:30. I expect that's going to
14 go away, though.

15 THE COURT: Okay.

16 MR. KURTZMAN: I don't expect that trial
17 to go forward, so 1 o'clock next Friday is fine with
18 the government.

19 THE COURT: All right. Well, that's what
20 we'll do. And, Mr. Gant, I would encourage you to
21 have a conversation with Mr. Kurtzman. If there is
22 anything else that you think you're entitled to and
23 you want to have in advance of the proceeding, I'd
24 rather us not go through this exercise again. And if
25 you-all can determine any of those matters and pass

1 those in advance, that would be greatly appreciated,
2 and I think it would expedite the proceedings as well.
3 But I'm essentially granting the defendant's request
4 to continue and reset the detention hearing in order
5 for him to review this additional information.

6 MR. GANT: Thank you, Your Honor.

7 THE COURT: All right. Mr. Kurtzman,
8 anything further from the government's standpoint we
9 need to do at this time?

10 MR. KURTZMAN: No, Your Honor.

11 THE COURT: Mr. Gant, anything else on
12 behalf of your client today?

13 MR. GANT: No, Judge. Thank you very
14 much. Appreciate your patience.

15 THE COURT: All right. Thank you all.
16 We'll be in recess.

17 (Whereupon, the proceedings were
18 concluded on August 26, 2021, and resumed on
19 September 9, 2021, as follows:)

20 THE COURT: Good morning, welcome,
21 everyone. We're here this morning in the matter of
22 *United States of America versus Ronald McAbee*. It's
23 Case No. 3:21-mj-2956. This is an action from the
24 District of Columbia, and the case number there is
25 Docket No. 1:21-cr-35. We had previously began a

1 preliminary hearing and detention hearing in this
2 matter. And we had -- or, rather, I guess it was a
3 detention hearing only, maybe. And we had continued
4 the matter in order for Mr. Gant to receive some
5 information from the government. Mr. McAbee is
6 participating this morning by video conference.
7 Mr. Gant is on as his attorney, Mr. Kurtzman's here
8 for the United States.

9 Mr. Gant, first of all, have you had a
10 chance to speak with your client in advance of this
11 proceeding, and specifically did you-all discuss
12 proceeding by video conference today and does he
13 consent to do so?

14 MR. GANT: I did have the opportunity to
15 speak with him, Your Honor. And he has agreed that we
16 may proceed by video conference.

17 THE COURT: Very good, thank you. And
18 have you received the information that we adjourned
19 for and are you prepared to go forward at this time?

20 MR. GANT: Your Honor, I acknowledge
21 receipt of the requested material, and we are in a
22 position to proceed this morning.

23 THE COURT: Very good. Thank you,
24 Mr. Gant.

25 Mr. Kurtzman, is the government ready to

1 go forward and do y'all have any announcements before
2 we begin?

3 MR. KURTZMAN: We are prepared to go
4 forward, Your Honor. At this time I would ask -- I
5 believe when we left off Mr. Gant had begun
6 questioning Agent Acker, but really just to -- I think
7 the majority of the questions, if I recall correctly,
8 were regarding the videos, whether the clips had
9 longer versions, and it was really about that
10 information and about the sort of larger video
11 evidence that was available.

12 As the Court knows, Mr. Gant's in receipt
13 of the same materials. The government has additional
14 material that I think would inform the Court's
15 decision with respect to detention. And I would ask
16 that I, for efficiency sake, have the opportunity to
17 present those exhibits and that evidence with Agent
18 Acker and then allow the defense to question Agent
19 Acker regarding both the videos and this new evidence,
20 which is the text messages we shared with the Court
21 and Mr. Gant.

22 THE COURT: Okay.

23 MR. GANT: I would (indiscernible) that,
24 Judge.

25 THE COURT: I'm sorry?

1 MR. GANT: I would object to proceeding
2 in that fashion, Your Honor. And my objection is
3 based upon this: In light of the material that I have
4 received pursuant to my request, I have decided that I
5 have no questions for Mr. Acker. Having no questions
6 for Mr. Acker would then, as I understand the Rules of
7 Criminal Procedure, preclude the government from any
8 redirect at all because redirect is directed at issues
9 raised on my cross. No cross, no redirect.

10 THE COURT: Okay.

11 MR. GANT: Now the government --

12 THE COURT: I'm sorry, go ahead,
13 Mr. Gant.

14 MR. GANT: Now the government -- I'm
15 sorry, Judge, I didn't mean to interrupt you. Now the
16 government wants to introduce evidence now that the
17 government had in its possession when they put their
18 case on initially.

19 Now Mr. Kurtzman is going to say, well,
20 no, no, I didn't have this. Well, he, Mr. Kurtzman,
21 may not have had it, but the United States government,
22 who he represents, did have it and at that time didn't
23 introduce it. So now they want to introduce it and I
24 would object most strenuously.

25 THE COURT: Mr. Kurtzman, what do you

1 say?

2 MR. KURTZMAN: Your Honor, the Rules of
3 Criminal Procedure that Mr. Gant refers to are
4 obviously loosened in the setting which we're in,
5 first off.

6 Second off, his statement that I had this
7 or the government had it, the government certainly had
8 Mr. McAbee's phone at the time we initiated this
9 hearing. What I didn't have was the data from that
10 phone, which is new evidence. I've introduced newly
11 discovered evidence in hearings like this before in
12 this very courtroom, and the idea that it should be
13 excluded because Mr. Gant doesn't want to ask Agent
14 Acker any questions I don't think is a valid
15 objection.

16 I think it's a way to try and shield the
17 Court from having all the information rather than an
18 open evaluation of the facts and circumstances here.

19 THE COURT: Well, I think -- yeah, go
20 ahead, Mr. Gant, I'll hear from you.

21 MR. GANT: Just a brief response,
22 Your Honor. Again, though Mr. Kurtzman individually
23 may not have had the information that he seeks to
24 introduce now, the government certainly did. Next,
25 counsel takes the position that the Rules of Criminal

1 Procedure do not apply in these proceedings, but --
2 and I know Your Honor is aware of this, but if you
3 look at 18 USC 1342F -- c, d, e, that would be (2) (B)
4 where it says the rules concerning admissibility of
5 evidence in criminal trials do not apply to the
6 presentation and consideration of information at the
7 hearing. We're not talking about Rules of Evidence
8 here. We're talking about Rules of Criminal
9 Procedure. And there's nothing in the statute that
10 says that the Rules of Criminal Procedure don't apply.

11 And I suggest most respectfully, the
12 government had the opportunity and at least had the
13 material that they seek to get in now. They had it
14 when they put their case on and didn't introduce it.
15 And at this time I object most strenuously.

16 THE COURT: Okay. Well, we're still in
17 the proof phase of this proceeding. I agree that it's
18 probably not appropriate to allow Mr. Kurtzman to have
19 a redirect examination because there's no
20 cross-examination that's been conducted. However,
21 Mr. Kurtzman's still entitled to put whatever proof on
22 he wants to put on. He's still, you know, in the
23 process of putting his proof on.

24 Mr. Kurtzman, if you want to -- if you
25 have additional proof you want to put on, if you have

1 another witness you want to call to put on or if you
2 want to put it on through proffer or if you want to
3 ask that you be allowed to recall a previous witness
4 for purposes of putting some particular proof on, I
5 think that would be procedurally the appropriate way
6 to do this.

7 But I don't think that -- this isn't a
8 situation where we had a full hearing, the hearing
9 ended and now the government's come back wanting to
10 put proof on. We're still -- I'm still taking proof
11 in this case. I don't think that precludes the
12 government from putting on additional proof. The
13 question is just procedurally how that happens. And I
14 don't think redirect examination is appropriate. But
15 I think other options may be out there, Mr. Kurtzman,
16 if you want to make a suggestion.

17 MR. KURTZMAN: Your Honor, I -- I don't
18 think I used the phrase redirect. I was going to ask
19 to recall Agent Acker. I'm happy to proceed by
20 proffer if that's easier, and then I would then ask to
21 excuse Agent Acker and I would proceed by proffer to
22 introduce the remainder of the government's evidence
23 if Mr. Gant doesn't have any questions of him.

24 THE COURT: Well, I think it's your
25 prerogative how you want to put your proof on. You

1 tell me what you want to do.

2 MR. KURTZMAN: Your Honor, could I have a
3 moment?

4 THE COURT: You may. I'm going to take
5 just a very short recess here for just a second. If
6 you-all bear with me for just a second, please.

7 (Whereupon, a break was taken.)

8 THE COURT: Okay. I'm back on. Thank
9 you all. Appreciate your patience.

10 Mr. Kurtzman, are you back yet? Yeah, I
11 see you.

12 MR. KURTZMAN: Yes, Your Honor.
13 Your Honor, if we're all back on, I think for
14 efficiency sake since Mr. Gant doesn't have any
15 questions for Agent Acker, with respect to the
16 additional exhibits I provided Mr. Gant and the Court,
17 I'll proceed by proffer and introducing those and then
18 we can go to Mr. Gant's witnesses.

19 THE COURT: Okay.

20 MR. GANT: I object to that. May I --
21 and again, I know Your Honor knows this statute better
22 than most folks, but if you go to 18 USC
23 3142(f)(2)(B), it says: At the hearing such person
24 has the right to be represented by counsel and, if
25 financially unable to obtain adequate representation,

1 to have counsel appointed. The person shall be
2 afforded an opportunity to testify, to present
3 witnesses, to cross-examine witnesses who appear at
4 the hearing and to present information by proffer or
5 otherwise. It says the person. Not the government.

6 And if Your Honor -- again, same
7 paragraph, 18 USC 3142(f) (2). It uses the phrase the
8 attorney for the government -- pardon me. Hearing
9 shall be held immediately upon the person's first
10 appearance before the judicial officer unless that
11 person or the attorney for the government seeks a
12 continuance. Two paragraphs -- pardon me, two
13 sentences further down, it speaks of the attorney for
14 the government. Again, one line below that, attorney
15 for the government.

16 And 3142(f) (2)(B), the term attorney for
17 the government is used four times. And in the very
18 next paragraph where they talk about the person shall,
19 the term attorney for the government is not used. And
20 I suggest to you most respectfully, the drafters of
21 this statute certainly knew how to use the term
22 attorney for the government. They used it in previous
23 paragraphs.

24 But when they talk about a proffer, they
25 talk about the person. And I suggest to you most

1 respectfully, the person is the accused, not the
2 attorney for the government. So I would object to the
3 government proceeding by proffer.

4 THE COURT: Very good. Thank you,
5 Mr. Gant. Mr. Gant, your objection's noted. This
6 Court consistently allows the government to proceed by
7 proffer in these types of proceedings. Again, your
8 objection's noted for the record, but I'm going to
9 allow Mr. Kurtzman to proceed by way of proffer here.

10 MR. KURTZMAN: Your Honor, if it's
11 permissible with the Court, I'd ask -- Agent Acker is
12 here in the room in attendance with me. I'd ask to
13 excuse him from these proceedings because it sounds
14 like he's no longer needed to testify.

15 THE COURT: Yeah, Agent Acker, you can be
16 excused.

17 Mr. Kurtzman, I'll hear from you.

18 MR. KURTZMAN: Yes, Your Honor, just one
19 moment, I'm pulling up the -- I'm pulling up the
20 relevant (indiscernible).

21 MR. GANT: Judge, may I just raise one
22 other thing?

23 THE COURT: You may.

24 MR. GANT: And I didn't mean to be
25 obstructive. I have an obligation to advocate on

1 behalf of my client.

2 THE COURT: Correct.

3 MR. GANT: I would ask that Mr. Acker not
4 be allowed to leave just yet because if the government
5 is going to put in this new evidence, that may give
6 rise for a need on my part to cross-examine him.

7 THE COURT: Well, if they're not putting
8 it in through him, Mr. Gant, you're not entitled to
9 cross-examine him on it. And so I'm -- respectfully,
10 again, I'll overrule your objection to Agent Acker
11 being excused. He's provided his testimony. And I'm
12 going to let him be excused. The record's -- the
13 record's clear on your position, and that will be
14 noted.

15 MR. GANT: Very well.

16 MR. KURTZMAN: Your Honor, if it pleases
17 the Court, by way of proffer, as the Court well knows,
18 this detention hearing initially began on August 26 of
19 2021 in the morning. It was reset before you that
20 day.

21 On August 26, 2021, at 5:16 in the
22 evening, I received from Agent Acker an email with the
23 following text that says: I just received the image
24 of McAbee's phone this afternoon. A forward to you
25 will take a while. Attached is the communication via

1 text message with Michael Roberts.

2 On August 30, Agent Acker again wrote me
3 and said, attached is another chat from McAbee's phone
4 referencing actions in DC. On 1-8-21 he sent the
5 following to a contact stored in his phone as Uncle
6 Eddie.

14 Your Honor, now present on my screen is
15 Exhibit B, the extraction report as you can see from
16 the Apple iPhone which Mr. McAbee consented to the
17 search of. And here is the extraction between he and
18 Mr. Roberts. I will read certain communications
19 between the two men.

Beginning on page 1 into page 2. For the Court and for those watching, the green messages are sent by Mr. McAbee to Mr. Roberts and the blue messages are Mr. Roberts' response, in turn, to Mr. McAbee.

25 So beginning December 31 of 2020,

1 Mr. McAbee writes Mr. Roberts and says: Hey, buddy,
2 you going to DC on the 6th. Mr. McAbee then says: I
3 want to go, but only if you're going. I'm not in
4 shape to fight right now.

5 Move to page 2 of Exhibit B. Mr. Roberts
6 responds to Mr. McAbee: Yes, sir, I sure am.
7 Mr. McAbee then responds that same day: Let's link up
8 and go. I'll slap a commie with this dead arm. Call
9 me after work.

10 Proceeding to page 3, Mr. Roberts texts
11 Mr. McAbee a photo attachment with text accompanying
12 it says: That's what I'll carry in my pocket.

13 I'll now share with the Court and defense
14 counsel a previously produced photo, which is marked
15 as Exhibit C, which is the photo that Mr. Roberts
16 shared with Mr. McAbee on December 31 of what he
17 planned to carry with him on January 6 when they went
18 to the United States Capitol.

19 Returning to Exhibit B on page 4, later
20 that same day still, December 31 of 2020, Mr. McAbee
21 writes Mr. Roberts -- after seeing that picture, he
22 says: How can I get some knuckles. Mr. Roberts
23 responds: Amazon's quick. To which Mr. McAbee
24 responds: Well, I've got a tire repair kit and the T
25 handle tire puncture is a great tool.

1 Moving to page 9 of Exhibit B still on
2 December 31, McAbee writes Mr. Roberts, he said: All
3 right. Sarah's not too happy with me going and her
4 not but oh well. Mr. Roberts responds: LOL only
5 reason I told Mel no is because of Eli. Mr. McAbee
6 then responds: I don't think the girls should be
7 subject to violence. It will be there. And I'd
8 rather not worry about them.

9 Proceeding to page 14 of Exhibit B, still
10 on December 31 of 2020, Mr. Roberts writes Mr. McAbee
11 and says in text: I had to explain to Eli last night
12 that I was going to DC and what could happen. This is
13 my fight so he doesn't have to fight.

14 Proceed to page 15 and the conversation
15 still continuing on December 31. Mr. McAbee responds
16 to Mr. Roberts: I will rise or fall along side of
17 you. This is for future generations.

18 Proceeding to page 29 of Exhibit B, still
19 on December 31, 2020, in the evening now, Mr. McAbee
20 texts Mr. Roberts: Most likely. You will probably
21 need to call Sarah later. She's a little upset.
22 Which Mr. Roberts responds: How come? LOL. McAbee
23 responds: My well-being.

24 And on to the next page, Mr. Roberts
25 responds to that message by saying: I'll always take

1 the first lick. Which Mr. McAbee responds: I'm not
2 worried about that, but I guess she is. To which
3 Mr. Roberts responds: Mel's furious. I know what
4 you're dealing with.

5 On to page 31 in that same text thread,
6 Mr. McAbee responds and asks Mr. Roberts: Why is she
7 mad. To which Mr. Roberts responds: Explain to your
8 kid that you might not come home, that's way worse.
9 She can't go. To which on page 32 Mr. McAbee
10 responds: Oh, yeah, but it's for the cause.

11 Skipping to page 48 of Exhibit B -- or,
12 excuse me, page 47, now on January 3 of 2021,
13 Mr. Roberts texts Mr. McAbee: We gonna light these
14 bitches up. To which Mr. McAbee responds: Let's go
15 man, with an exclamation mark.

16 And then on page 48 Mr. Roberts on
17 January 4 texts Mr. McAbee a picture, which I will
18 introduce as Exhibit E in a moment. Mr. Roberts texts
19 Mr. McAbee a picture and says they arrived. And then
20 we look at Exhibit E, which is that thumbnail which is
21 in there, which is the glove with the metal reinforced
22 knuckles.

23 If I could have a moment. I don't want
24 to skip over what I previously marked as Exhibit D,
25 which is another thumbnail picture sent by Mr. Roberts

1 to Mr. McAbee, which, to go backwards just for a
2 moment, on page 37 of Exhibit B, on January 3 of 2021,
3 Mr. Roberts texts to Mr. McAbee: Ready to roll,
4 accompanied by a photo, a thumbnail, which has been
5 enlarged in Exhibit D, and displays what appears to be
6 two knives, a set of reinforced gloves different than
7 what was just shown on page 48, as well as metal
8 knuckles.

9 Moving forward -- moving back to
10 Exhibit B and moving forward to page 59, now January 4
11 of 2021, Mr. Roberts texts Mr. McAbee: Just filled
12 out my papers for the PB, to which Mr. McAbee
13 responds: You western chauvinist LOL.

14 Moving forward to page 72 of Exhibit B on
15 January 7, 2021, Mr. McAbee texts Mr. Roberts, says:
16 DC officer died from the fire extinguisher to the
17 head. The chief resigned because of the actions they
18 took Wednesday and is complaining that we used metal
19 pipe, chemical irritants and other weapons against
20 them. To which Mr. Roberts responded that same day:
21 They are full of shit. To which Mr. McAbee responds
22 that same day: We held our ground after being
23 attacked.

24 Moving forward to page 86 of Exhibit B on
25 January 10 of 2021, Mr. Roberts texts Mr. McAbee and

1 says: We done nothing wrong. To which Mr. McAbee
2 responds: Absolutely right. You going to the
3 inauguration?

4 Page 87 of Exhibit B, Mr. Roberts
5 responds, IDK yet, which normally means I don't know
6 yet, to which Mr. McAbee responds: It will be bullets
7 this time there. Currently 6200 National Guardsmen,
8 several police agencies throughout the US, snipers
9 everywhere.

10 To which Mr. Roberts responds: I don't
11 think that will happen. To which Mr. McAbee responds
12 later that same day on page 88 of Exhibit B: Eh IDK
13 they shot us at the Capitol. To which Mr. Roberts
14 responds later that same day: Trump will be the one
15 to be inaugurated. To which Mr. McAbee responds later
16 on January 10: I call for secession, with an
17 exclamation point.

18 Your Honor, at this time, the government
19 would move to admit Exhibit B, C, D and E into
20 evidence.

21 THE COURT: They'll be admitted.

22 MR. GANT: Over my objection, Your Honor.

23 THE COURT: Objection's noted.

24 (Government Exhibits B, C, D and E were
25 admitted.)

1 MR. KURTZMAN: Your Honor, the next
2 exhibit is Exhibit F taken from the same Cellebrite
3 phone extractions of Mr. McAbee's phone. As evidenced
4 by the page displayed right now, it's between, again,
5 Mr. McAbee and an individual saved in his phone as
6 Uncle Eddie. As you can see on January 7 of 2021,
7 Mr. McAbee, again, with the green messages sends Uncle
8 Eddie a thumbnail photo. Give me one moment.

9 That thumbnail photo presented -- shared
10 now with the Court as Exhibit G, which is a picture of
11 Mr. McAbee with what appears to be a shoulder sling on
12 holding up a newspaper entitled *The Newsleader* with
13 the headline of Insurrection.

14 Moving forward through Exhibit F, page 3,
15 Mr. McAbee texts the individual saved in his phone as
16 Uncle Eddie on January 8 that says, I've shed blood
17 for my country by the hands of the swamp. I will shed
18 much more in the days to come. I will not forget the
19 oath I swore years ago to protect the America I once
20 knew. And there is a (indiscernible) underneath that.

21 In this same message, Mr. McAbee attaches
22 three thumbnail photos, two of which appear to be a
23 hat with blood on it, and then the third that he sends
24 along with that text I just read the government would
25 introduce as Exhibit H, which appears to be a cut

1 along the forehead of Mr. McAbee -- Mr. McAbee's head.

2 And, Your Honor, at this time the
3 government would move to admit Exhibits F, G and H.

4 MR. GANT: Same objection.

5 THE COURT: All right. They'll be
6 admitted. Your objection's noted.

7 (Government Exhibits F, G and H were
8 admitted.)

9 MR. KURTZMAN: Your Honor, that concludes
10 the proof the government has with respect to
11 detention.

12 THE COURT: All right, very good.

13 Mr. Gant, do you have any proof you want
14 to put on?

15 MR. GANT: On the issue of detention,
16 yes, Your Honor.

17 THE COURT: Very good. All right.

18 MR. GANT: With your permission, may I
19 call my first witness.

20 THE COURT: Yes, sir.

21 MR. GANT: Ms. Sarah McAbee.

22 THE COURT: All right. Ms. McAbee, are
23 you there?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. Very good. If

1 you'd raise your right hand, please, and be sworn.

2 **SARAH MCABEE**

3 called as a witness, after having been first duly
4 sworn, testified as follows:

5 THE COURT: All right, very good. If you
6 could state your name, please, and spell your last.
7 Actually, spell both, please.

8 THE WITNESS: Sarah McAbee. S-a-r-a-h,
9 last name M-c-a-b-e-e.

10 THE COURT: Very good. Thank you, ma'am.
11 You may ask, Mr. Gant.

12 MR. GANT: Thank you, Judge.

13 **DIRECT EXAMINATION**

14 BY MR. GANT:

15 Q. Ms. McAbee, are you a resident of the
16 Middle District of Tennessee?

17 A. Yes, sir.

18 Q. How long have you been a resident of the
19 Middle District of Tennessee?

20 A. Since November 2020.

21 Q. Are you employed?

22 A. Yes.

23 Q. Tell His Honor, if you would, please, the
24 nature of your employment.

25 A. A marketing executive.

1 Q. And did you have, Ms. McAbee, regular
2 hours?

3 A. Yes.

4 Q. And what are those hours?

5 A. Typically 9:00 to 5:00.

6 Q. Do you work at home or are you assigned
7 to an office?

8 A. No, I work from home.

9 Q. Ms. McAbee, if His Honor, Judge Frensley,
10 was to see fit to grant your request to be a
11 third-party custodian for Mr. Ronald McAbee, would you
12 be willing to accept that responsibility?

13 A. Yes, sir.

14 Q. If His Honor were to see fit to grant you
15 the status as the third-party custodian for Mr. Ronald
16 McAbee, could you assure the Court that you would do
17 what you could to see to it that Mr. McAbee didn't
18 flee the jurisdiction?

19 A. Yes, sir.

20 Q. Would you likewise assure the Court that
21 if you were granted such status that you would do what
22 you could to assure the Court that Mr. McAbee would
23 not pose a threat to anybody in the community or the
24 community itself?

25 A. Yes, sir.

1 Q. Should His Honor see fit to grant you
2 such custody and, as a result, impose certain
3 conditions to his release, that is, Ronald's release,
4 could you assure the Court that you'd do what you
5 could to see to it that he complied with those
6 conditions?

7 A. Yes, sir.

8 Q. If His Honor were to see fit to grant,
9 for example, third-party custody of Mr. Ronald McAbee
10 and provide that he be monitored by way of electronic
11 monitoring, would you be willing to take on the
12 responsibility of providing whatever equipment would
13 be necessary in order for that to happen?

14 A. Yes, sir.

15 Q. If His Honor were to see fit to grant you
16 third-party custody of Mr. Ronald McAbee and the Judge
17 impose a condition that Mr. Ronald McAbee be subject
18 to a curfew, would you be willing to assure the Court
19 that you'd see to it as best you could that he would
20 comply with such condition?

21 A. Yes, sir.

22 Q. Ms. McAbee, are there any weapons, any
23 guns, firearms in your home?

24 A. No, sir.

25 Q. At some point in time, Ms. McAbee, did

1 you request of certain individuals known to both you
2 and your husband that they write letters of character
3 references on behalf of your husband?

4 A. Yes, sir.

5 Q. I want to hand you what has been
6 previously marked as -- we'll call it McAbee Exhibit C
7 and ask you to take a look at that document. Have you
8 reviewed it?

9 A. Yes.

10 Q. Do you recognize what that is?

11 A. Yes.

12 Q. Tell us, if you would, please, what it
13 is.

14 A. Character reference letter from Emily
15 Gray.

16 Q. I'm sorry, the name?

17 A. Emily Gray.

18 Q. And do you know Ms. Emily Gray?

19 A. Yes.

20 Q. Tell His Honor, if you would, please, who
21 Ms. Gray is.

22 A. My older sister.

23 Q. I'm going to hand you what has been
24 marked as Exhibit E, this is McAbee Exhibit E. Do you
25 recognize that?

1 A. Yes, sir.

2 Q. Tell us if you would, please, what that
3 is.

4 A. A reference letter from Austin Hise.

5 Q. Was Mr. Hise one of the individuals you
6 asked to submit a character reference?

7 A. Yes, sir.

8 Q. Thank you. I'm going to hand you
9 Exhibit F and ask you to look at that and tell
10 His Honor, if you would, please, what that is.

11 A. Exhibit F, character reference letter
12 from Brittney Hillyer.

13 Q. All right. Again, Ms. Hillyer was one of
14 the individuals that you requested a letter of
15 reference --

16 A. Yes, sir.

17 Q. -- character reference?

18 Exhibit G?

19 A. A character reference from Austin
20 Langley.

21 Q. And I pass you Exhibit H. Tell
22 His Honor, if you would, please, what that exhibit is.

23 A. Character reference from Nathan McMahan.

24 Q. Another individual from whom you
25 requested a --

1 A. Yes, sir.

2 Q. -- character reference?

3 | Exhibit I?

4 A. A character reference letter that I
5 requested from Angelo Nardone.

6 Q. And J?

7 A. A character reference letter that I
8 requested from Gregory Sims.

9 Q. And Exhibit K?

10 A. A character reference letter from Ronnie
11 Stockton that I requested.

Q. And finally, Exhibit M as in Mary.

13 A. A character reference letter that I
14 requested from Jennifer Wright.

15 Q. Thank you.

16 MR. GANT: If the Court please, I have no
17 further questions of Mrs. Sarah McAbee. And I'd move
18 for the admission of Exhibits C through I think it's
19 K.

THE COURT: Well, let me ask you about
that, Mr. Gant. Because you did not move for
admission of Exhibit D or L. You didn't just ask for
L, but you said C through K. I don't know if D was an
oversight or if you intended not to ask for it to be
admitted.

1 MR. GANT: I intended not to ask for the
2 admission of those two, Judge.

3 THE COURT: All right. So then we'll
4 admit C through M with the exception of D and L. I
5 think that covers it.

6 MR. GANT: Thank you.

7 THE COURT: Thank you, those will be
8 admitted.

9 (Defense Exhibits C, E, F, G, H, I, J, K
10 and M were admitted.)

11 THE COURT: Mr. Kurtzman, do you have any
12 questions?

13 MR. KURTZMAN: Yes, Your Honor, just a
14 few.

15 **CROSS-EXAMINATION**

16 BY MR. KURTZMAN:

17 Q. Ma'am, you were asked about where you
18 live. Do you live in Unionville, Tennessee?

19 A. Yes, sir.

20 Q. And that's actually in Bedford County;
21 right?

22 A. Yes, sir.

23 Q. Just a technical thing, I think that's
24 actually in the Eastern District of Tennessee, which
25 is just a -- probably stuff for the lawyers and court

1 to worry about, but just wanted to make sure that was
2 -- that was understood.

3 MR. GANT: I think (indiscernible)
4 Mr. Kurtzman, and I apologize. I think you are right.

5 MR. KURTZMAN: And, Mr. Gant, I only know
6 that because the FBI from the Eastern District is
7 handling this case.

8 BY MR. KURTZMAN:

9 Q. Now, ma'am, the day Mr. McAbee was
10 arrested, they executed a search warrant at your
11 house. I believe they had a search warrant, but you
12 also gave consent to search; is that right?

13 A. Yes, sir.

14 Q. And when living in that house, did you
15 see an all-black American flag displayed on the front
16 of your property?

17 MR. GANT: Judge, I'm going to object to
18 this line of questioning. I have limited my questions
19 to this witness to those questions necessary to
20 determine whether or not she is a suitable third-party
21 custodian. I intentionally stayed away from the
22 facts. His questions are beyond the scope of my
23 direct examination. I object.

24 THE COURT: Mr. Kurtzman.

25 MR. KURTZMAN: Your Honor, I'm allowed to

1 inquire as to the suitability of the proposed
2 third-party custodian. Regardless of whether Mr. Gant
3 limited his questions, I'm allowed to ask questions
4 now that go to the suitability of his proposed
5 custodian.

6 THE COURT: The objection's overruled.
7 I'll give you a little room, but let's try to -- let's
8 try not to go too far, Mr. Kurtzman.

9 MR. KURTZMAN: Yes, Your Honor.

10 BY MR. KURTZMAN:

11 Q. Ma'am, do you need me to repeat that
12 question?

13 A. Yes, please.

14 Q. So while residing at the Unionville house
15 with your husband, have you ever observed an all-black
16 American flag flying from the front of your residence?

17 A. Yes, sir.

18 Q. Are you familiar with the significance of
19 an all-black American flag rather than a red, white
20 and blue one?

21 A. No, sir.

22 Q. Did you say no?

23 A. Yes, sir.

24 MR. KURTZMAN: Okay. Those are all my
25 questions. Thank you.

1 THE COURT: All right, very good.

2 Mr. Gant.

3 MR. GANT: Judge --

4 THE COURT: I'm sorry, go ahead,

5 Mr. Gant.

6 MR. GANT: With your permission, may I
7 call the next witness?

8 THE COURT: You may. Thank you,

9 Ms. McAbee. Appreciate your testimony.

10 *****WITNESS EXCUSED*****

11 MR. GANT: Call Ms. Kimberly Gray,
12 G-r-a-y.

13 THE COURT: All right. Ms. Gray, if
14 you'd raise your right hand, please, and be sworn.

15 **KIMBERLY GRAY**

16 called as a witness, after having been first duly
17 sworn, testified as follows:

18 THE COURT: Very good. If you'd sit
19 down, please, and state your name.

20 THE WITNESS: Kimberly Gray.

21 THE COURT: All right. Mr. Gant.

22 THE WITNESS: G-r-a-y.

23 THE COURT: Thank you, ma'am.

24

25

1 **DIRECT EXAMINATION**

2 BY MR. GANT:

3 Q. Ms. Gray, do you know an individual by
4 the name of Ronald McAbee?

5 A. Yes.

6 Q. Speak up, please.

7 A. Yes.

8 Q. Tell His Honor how it is you know
9 Mr. Ronald McAbee.

10 A. He is my son-in-law.

11 Q. Just about how long has he been your
12 son-in-law?

13 A. 2016, five years.

14 Q. Ms. Gray, are you a resident of the
15 Middle District of Tennessee?

16 A. Yes, sir.

17 Q. What county do you live in?

18 A. Marshall.

19 Q. Marshall County. I think that's the
20 Middle District of Tennessee. Ms. Gray, should
21 His Honor decide to grant your daughter the
22 third-party custody of Mr. Ronald McAbee, would you be
23 willing to assure the Court that you would likewise be
24 willing to take on the responsibility as a third-party
25 custodian, should there be some reason that your

1 daughter could not?

2 A. Yes, sir.

3 Q. If His Honor were to see fit to grant you
4 let's call it joint third-party custody, would you be
5 willing to assure the Court that you'd do what you
6 could to see to it that your son-in-law didn't flee
7 the jurisdiction?

8 A. Yes, sir.

9 Q. Could you assure the Court you'd do what
10 you could to see to it that your son-in-law posed no
11 threat to any individual in the community or the
12 community itself?

13 A. Yes, sir.

14 Q. Should His Honor see fit to grant you
15 we'll call it joint third-party custody of Mr. Ronald
16 McAbee and impose conditions to his release, would you
17 assure the Court that you'd do what you could to see
18 to it that Mr. Ronald McAbee complied with those
19 conditions?

20 A. Yes, sir.

21 Q. Would you at all, Ms. Gray, hesitate to
22 notify the Court of any breach of any condition that
23 the Court might impose on Mr. Ronald McAbee?

24 A. No, sir.

25 Q. Are you employed, ma'am?

1 A. I am.

2 Q. Tell His Honor how it is that you're
3 employed. Please speak up.

4 A. JRL Enterprises in Franklin.

5 Q. What kind of business is that?

6 A. It's a meat market and deli.

7 Q. And how long have you been employed or
8 engaged in that business?

9 A. Five years.

10 Q. Ms. Gray, do you have any hesitation
11 whatsoever of taking on the responsibility either as
12 the third-party custodian or as joint third-party
13 custodian in this matter?

14 A. Can you say that again?

15 Q. Do you have any hesitation in taking on
16 the responsibility as a third-party custodian --

17 A. No, sir.

18 Q. -- for Mr. Ronald McAbee?

19 A. Correct. And it was four years on the
20 employment.

21 Q. All right.

22 MR. GANT: Did you hear that, Your Honor?
23 I'm sorry.

24 THE COURT: I did.

25

1 MR. GANT: Thank you, I have no further
2 questions of Ms. Gray.

3 THE COURT: Very good. Mr. Kurtzman, do
4 you have any questions?

5 MR. KURTZMAN: No, Your Honor.

6 THE COURT: All right. Very good. Thank
7 you, Ms. Gray. I appreciate your testimony.

8 THE WITNESS: Thank you.

9 *****WITNESS EXCUSED*****

10 THE COURT: Mr. Gant, do you have any
11 other proof you want to put on?

12 MR. GANT: I have, if Your Honor please,
13 Mr. Philip Nelson.

14 THE COURT: All right.

15 MR. GANT: And he is appearing,
16 Your Honor, by video.

17 THE COURT: Okay. Mr. Nelson, is that
18 you I see on the iPad there?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: All right. Very good. Let
21 me go ahead and swear you, Mr. Nelson.

22 **PHILIP NELSON**

23 called as a witness, after having been first duly
24 sworn, testified as follows:

25 THE COURT: All right, very good. You

1 can put your hand down. Would you state your name,
2 please, for the record.

3 THE WITNESS: Philip Nelson. Philip with
4 one L.

5 THE COURT: All right. Mr. Gant, you may
6 ask.

7 **DIRECT EXAMINATION**

8 BY MR. GANT:

9 Q. Mr. Nelson, where do you live?

10 A. I live in (indiscernible), Tennessee.

11 THE COURT: Sorry, what was that?

12 THE WITNESS: Coalfield, Tennessee.

13 THE COURT: Okay.

14 BY MR. GANT:

15 Q. Do you know an individual by the name of
16 Ronald McAbee?

17 A. Yes, sir.

18 Q. Would you tell His Honor, please, how it
19 is that you came to know Mr. Ronald McAbee.

20 A. We both met in football city league when
21 we were four years old.

22 Q. And have the two of you maintained a
23 relationship since then?

24 A. Yes, sir.

25 Q. How often would you say, Mr. Nelson, that

1 you have communicated with Mr. McAbee in the last
2 year, year and a half?

3 A. I'd say quite frequently. Possibly two
4 or three times a month, if not more.

5 Q. Tell His Honor, if you would, please,
6 based upon the length of your relationship with
7 Mr. McAbee, your opinion about the character of
8 Mr. McAbee.

9 A. Could you say that again? You cut out, I
10 apologize.

11 Q. I'm sorry. Tell His Honor, Judge
12 Frensley, if you would, please, your opinion with
13 regard to the character of Mr. Ronald McAbee.

14 A. Mr. McAbee's character is
15 (indiscernible). He stands strong in what he believes
16 in. He's a wonderful man.

17 Q. And in your experience in the
18 relationship between the two of you, how has he shown
19 to you the nature of his character? Are there
20 examples?

21 A. He's continuously checking in on me and
22 my family, specifically when I was in the military.
23 He made sure that he called me constantly. Made sure
24 my well-being was good and even more so when I came
25 home.

1 Q. Mr. Nelson, tell His Honor, if you would,
2 please, your reaction once you heard that Ronald had
3 been charged with these offenses arising out of the
4 January 6 demonstration in DC. What was your
5 reaction?

6 A. My reaction, I had difficulty believing
7 such.

8 Q. And tell us why that is.

9 A. It doesn't -- it's not in his character
10 at all.

11 MR. GANT: Thank you, Mr. Nelson. I have
12 no further questions of this witness, Your Honor.

13 THE COURT: Mr. Kurtzman, any questions
14 of Mr. Nelson?

15 MR. KURTZMAN: Yes, Your Honor.

16 **CROSS-EXAMINATION**

17 BY MR. KURTZMAN:

18 Q. Mr. Nelson, you're aware that
19 Mr. McAbee's charged with assaulting law enforcement
20 officers; right?

21 A. Yes, sir.

22 Q. And you're aware that he was, in fact,
23 himself a law enforcement officer on January 6 of
24 2021?

25 A. Say again, sir.

1 Q. Were you aware that he was actually a law
2 enforcement officer himself on January 6, 2021, when
3 he went to DC?

4 A. Yes, sir.

5 Q. I'm going to show you a couple pictures.
6 So, Mr. Nelson, this is from a motion filed by the
7 government. I don't know if you were here in the
8 prior proceeding, but Mr. McAbee has admitted during a
9 postMiranda interview that the individual pictured in
10 the -- the individual's picture that's wearing the red
11 hat is him.

12 Do you see him there standing over a law
13 enforcement officer on his back, that law enforcement
14 officer on the ground?

15 A. Yes.

16 Q. And you don't think that's reflective of
17 his character?

18 A. No, sir.

19 Q. Do you see that picture of the individual
20 with his arms or his hands on the officer's legs with
21 the red hat again?

22 A. Yes, sir.

23 Q. That officer's on his back again?

24 A. Yes, sir.

25 Q. And that's Mr. McAbee pulling him along

1 with another individual who's in the top half of that
2 photo in the (indiscernible)?

3 MR. GANT: I object to the reference of
4 pulling.

5 THE COURT: Restate your question,
6 Mr. Kurtzman.

7 BY MR. KURTZMAN:

8 Q. Mr. Nelson, you understand that the
9 individual circled in red there with the red hat is
10 Mr. McAbee with his hands on a law enforcement
11 officer's legs?

12 A. Yes, sir.

13 Q. And, Mr. Nelson, you said that you knew
14 that Mr. McAbee was a law enforcement officer on
15 January 6. Do you know where he was employed back
16 then?

17 A. No, sir.

18 Q. Do you recall him working for the
19 Williamson County Sheriff's Office?

20 A. No, sir.

21 Q. Do you see the individual wearing the
22 tactical vest with the sheriff patch on it?

23 A. Yes, sir.

24 Q. And this stillshot is taken from an
25 officer's body camera in which he is on his back,

1 Mr. McAbee is on top of him. Your contention would be
2 that is not indicative of his character?

3 A. No, sir.

4 MR. GANT: I object. Excuse me, I object
5 to the phraseology of that question.

6 THE COURT: Overruled.

7 MR. GANT: Mr. Kurtzman --

8 THE COURT: I'm sorry, Mr. Gant. I
9 didn't mean to cut you off.

10 MR. GANT: Mr. Kurtzman's suggesting that
11 that photo shows Mr. McAbee on top of the officer.
12 What the photo shows is Mr. McAbee above the officer
13 who is apparently on his back.

14 THE COURT: Objection's overruled. You
15 can answer the question if you understand it.

16 THE WITNESS: I don't understand the
17 question, Your Honor.

18 MR. KURTZMAN: Your Honor, no further
19 questions.

20 THE COURT: All right. Very good. Any
21 redirect, Mr. Gant?

22 MR. GANT: Just briefly, if Your Honor
23 please.

24 THE COURT: Certainly.

25

1 **REDIRECT EXAMINATION**

2 BY MR. GANT:

3 Q. Mr. Nelson, the photographs that you were
4 just shown show Mr. Ronald McAbee; is that right?

5 A. Yes, sir.

6 Q. And in those photographs showing
7 Mr. McAbee, would it be consistent with the character
8 of this individual that you know that he would protect
9 the police officers?

10 A. Could you rephrase the -- or repeat the
11 question, please.

12 MR. KURTZMAN: Your Honor, I'm going to
13 object. That calls for speculation.

14 MR. GANT: Based upon the character that
15 Mr. Nelson knows. His specific knowledge of the
16 character of Mr. Ronald McAbee. That's not
17 speculation.

18 THE COURT: No, you can ask the question.
19 Objection's overruled. Ask the -- reask the question
20 so that Mr. Nelson can hear it and he can answer it.

21 MR. GANT: Thank you, Your Honor.

22 BY MR. GANT:

23 Q. Based upon your knowledge of the
24 character of Mr. Ronald McAbee, would it be consistent
25 with his character that he would be protecting a

1 police officer?

2 A. Yes, sir.

3 MR. GANT: I have no further questions.

4 THE COURT: All right. Thank you,

5 Mr. Nelson. I appreciate your testimony today.

6 You're free to stay if you'd like to. You can also
7 leave if you need to as well.

8 *****WITNESS EXCUSED*****

9 THE COURT: Mr. Gant, do you have any
10 other proof you want to put on?

11 THE WITNESS: Thank you.

12 THE COURT: You're welcome, sir.

13 MR. GANT: Judge, I'd like to call my
14 final witness, if I may.

15 THE COURT: Okay. Who is that?

16 THE WITNESS: That's Mr. Dickson.

17 THE COURT: Okay. Mr. Dickson.

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. Mr. Dickson, sir,
20 if you'd raise your right hand, please.

21 **DAVID DICKSON**

22 called as a witness, after having been first duly
23 sworn, testified as follows:

24 THE COURT: All right. If you could
25 state your name, please, and spell your last for the

1 record.

2 THE WITNESS: My name is David A.
3 Dickson, D-i-c-k-s-o-n.

4 THE COURT: All right. Thank you,
5 Mr. Dickson. Mr. Gant, you may ask.

6 MR. GANT: Thank you, Judge.

7 **DIRECT EXAMINATION**

8 BY MR. GANT:

9 Q. Mr. Dickson, where do you live?

10 A. In the upper peninsula of Michigan.

11 Q. And is that where you are today as you
12 testify here by video?

13 A. Yes, sir.

14 Q. Mr. Dickson, do you know an individual by
15 the name of Ronald McAbee?

16 A. Yes, sir.

17 Q. Would you tell His Honor how it is that
18 you came to know Mr. Ronald McAbee.

19 A. I met him through his father-in-law,
20 Mr. Gray.

21 Q. And tell us how that happened.

22 A. Mr. Gray worked for me in the Air Force
23 many, many, many years ago.

24 Q. And as a result of him working with you
25 in the Air Force, did a relationship develop after

1 your service?

2 A. Yes, sir.

3 Q. Tell us about that, if you would, please.

4 A. I met -- I met his future son-in-law
5 several years ago on a business slash trip down to his
6 house.

7 Q. And, again, if you would, please,

8 Mr. Dickson, tell us the name of Ronald McAbee's
9 father-in-law. What is his name?

10 A. Sam. Sam Gray.

11 Q. All right. And tell us if you would,
12 please, about Sam Gray.

13 A. Sam Gray worked for me longer in the
14 Air Force. He was one of my best troops in all the 23
15 years I spent in the Service.

16 Q. At some point in time, you came to know
17 Ronald, the son-in-law of Sam; is that right?

18 A. Yes, sir.

19 Q. And tell us if you would, please,
20 Mr. Dickson, if you developed a sense of the character
21 of this future son-in-law of Sam Gray.

22 A. He's a very good young man.

23 Q. Tell us how it is, Mr. Dickson, it is
24 that you are in a position to say that he is a very
25 fine young man.

1 A. Well, sir --

2 Q. Tell us what you know about him.

3 A. Well, in my almost 45 years of law
4 enforcement, I've been able to be a very good judge of
5 character. And Col, my opinion, he's a very good
6 character -- he's a good person.

7 Q. Tell us if you would, please -- you just
8 said some 40 some odd years of law enforcement? Did I
9 hear you correctly?

10 A. Yes, sir.

11 Q. Tell us about -- tell us about that law
12 enforcement career, if you would, please.

13 A. Well, I spent over 23 years in the
14 Air Force as an air policeman, security policeman and
15 almost 22 years working for the US Marshals up here in
16 Marquette.

17 Q. Mr. Dickson, at some point in time you
18 learned that this young man, Ronald McAbee, had been
19 charged with activity in the January 6 demonstration
20 in Washington, did you not?

21 A. Yes, sir.

22 Q. And tell His Honor, if you would, please,
23 your reaction when you heard about this.

24 A. I was very surprised.

25 Q. And that's because of why?

1 A. Because he was employed as a law
2 enforcement officer. And he's -- I -- I just couldn't
3 believe what they were saying with him.

4 Q. In spite of what you have heard,
5 Mr. Dickson, given your years of law enforcement
6 experience, the allegations against Mr. Ronald McAbee,
7 have they changed your opinion about the character of
8 this young man?

9 A. No, sir.

10 MR. GANT: Thank you, sir. I have no
11 further questions of this witness, Your Honor.

12 THE COURT: All right. Mr. Kurtzman, any
13 questions?

CROSS-EXAMINATION

15 BY MR. KURTZMAN:

16 Q. In your experience as a law enforcement
17 officer, have you ever described another individual
18 charged with assaulting a law enforcement officer as a
19 good person?

20 A. That 's never happened, sir.

21 MR. KURTZMAN: No further questions.
22 Thanks, sir.

REDIRECT EXAMINATION

24 BY MR. GANT:

25 Q. Mr. Dickson, have you any reason to

1 believe that Mr. Ronald McAbee assaulted any law
2 enforcement officer?

3 A. No.

4 MR. KURTZMAN: Your Honor, I'm going to
5 object it's beyond the --

6 MR. GANT: No further questions.

7 MR. KURTZMAN: Beyond the scope. Now
8 that Mr. Gant's moved through my objection, but it's
9 an inappropriate question and I'd ask for it to be
10 stricken. It's beyond the scope of my cross, calls
11 for speculation, and Mr. Dickson -- if Mr. Gant would
12 like me to present Mr. Dickson with evidence, I'm
13 happy to.

14 THE COURT: The objection's sustained.
15 I'll strike the answer -- the question and response.

16 Mr. Dickson, thank you for your
17 testimony. I appreciate you being here today. And
18 thank you for speaking with the Court.

19 THE WITNESS: Thank you, sir.

20 *****WITNESS EXCUSED*****

21 THE COURT: Mr. Gant, do you have any
22 other proof you want to put on?

23 MR. GANT: I do not, Your Honor.

24 THE COURT: Very good. Mr. Kurtzman, do
25 you have any rebuttal proof?

1 MR. KURTZMAN: No, Your Honor.

2 THE COURT: All right. Very good.

3 Mr. Kurtzman, you want to be heard?

4 MR. KURTZMAN: Yes, Your Honor.

5 Your Honor, as we evaluate this case
6 under Section 3142 factors, the chief judge in the
7 district court of DC has provided what he calls
8 guideposts in assessing culpability of individuals
9 charged in conjunction with the Capitol riot.

10 And the Court has indicated
11 (indiscernible) for the purposes of differentiating
12 between (indiscernible). The first of those is we
13 look at the nature -- under the nature and
14 circumstances analysis is whether the defendant's
15 charged with felony or misdemeanor offenses.

16 Here, obviously Mr. McAbee has been
17 charged with felony offenses, otherwise the government
18 wouldn't even have a statutory basis for seeking
19 detention. And, in fact, Mr. McAbee is charged with a
20 crime of violence, which is assaulting a federal law
21 enforcement officer during the performance of their
22 duties, which the government would contend was
23 well-proven and well-demonstrated in the course of the
24 videos, Mr. McAbee pushing, (indiscernible), grabbing,
25 on top of law enforcements officers during the course

1 of that period of time.

2 The second of those guideposts that the
3 Court in DC looks at is the extent of the defendant's
4 prior planning. And, quote, for example, by obtaining
5 weapons and tactical gear. In this, the text message
6 evidence introduced today showed Mr. McAbee and this
7 individual he traveled to the riot with actively
8 obtaining and cultivating weapons before they went
9 there. Mr. McAbee asking Mr. Roberts to order him the
10 set of steel-knuckled reinforced gloves that he wore
11 and were pictured during the video. And the
12 individual that Mr. McAbee traveled with obviously
13 collected a number of weapons which he indicated at
14 the very least he was going to take with him.

15 Third of those guideposts is whether
16 defendants used and carried dangerous weapons. And
17 I'll concede here at this point that to the extent
18 anything beyond the metal knuckled reinforced gloves
19 as a dangerous weapon, Mr. McAbee is at one point seen
20 with a baton in his hand, but it appears he grabbed
21 that without striking an individual with it.

22 4, the fourth guidepost in the nature and
23 circumstances analysis, is the evidence of
24 coordination with other protestors before, during or
25 after the riot. The text message evidence you've seen

1 today indicated coordination, at the very least,
2 between Mr. McAbee and the individual that he traveled
3 to Washington, DC with as they sort of openly and
4 actually planned for violence during that event. To
5 the extent that they each expressed an understanding
6 that they either might not make it back or they
7 weren't allowing their wives to go because it was
8 going to be dangerous, which shows some coordination
9 and the understanding that what they were going to was
10 going to lead to violence.

11 THE COURT: Can I interrupt you for just
12 a minute, Mr. Kurtzman, and ask you a question about
13 that? Both with respect to the second guidepost
14 you're referring to as well as the fourth, does it
15 matter what the -- what the expectation was? I mean,
16 does it matter if, say, for example, they were
17 concerned that they might be attacked by some sort of
18 counterprotestors or whomever, as opposed to they had
19 an intention of going and attacking the police?

20 MR. KURTZMAN: Your Honor, they were
21 prepared to engage in violence. I think the planning
22 for violence, however it sort of manifests itself, is
23 significant enough. You know, whether they knew they
24 were going to storm the Capitol as they were prepping
25 to go, I can't say whether they knew that.

1 But I can say I think pretty definitively
2 that they were prepared to engage in violence, so much
3 so that Mr. McAbee wanted to ensure that the
4 individual he went with was going to be able to assist
5 him in either fighting (indiscernible) protestors.
6 Mr. McAbee knew the individual he was going with was
7 also going to be armed with knives and knuckles.
8 Those don't seem to be defensive weapons.

9 Mr. McAbee also -- and I failed to
10 mention as I was going through, he also made sure to
11 take his tactical vest with the sheriff emblem on it.
12 That is not a preparation for someone going to
13 vocalize their First Amendment rights, which they're
14 obviously entitled to.

15 THE COURT: So you're saying that --
16 MR. KURTZMAN: (indiscernible) preparing
17 for --

18 THE COURT: You're saying those
19 considerations don't necessarily have to have a
20 relationship to the charges that he faces.

21 MR. KURTZMAN: Your Honor, I think it
22 lends itself towards particularly an individual like
23 Mr. McAbee who is charged with a crime of violence,
24 when you prepare to engage in violence (indiscernible)
25 the government's alleged a crime of violence, I think

1 those things necessarily mesh with one another.

2 I understand your -- I think your point
3 on the sort of attenuated nature between maybe their
4 conversations between the 31st and the 4th and then
5 what happened on the 6th. And I don't think we want
6 to look at any of that in isolation. I think you look
7 at the planning, the execution and then the aftermath.

8 THE COURT: Okay. Thank you,
9 Mr. Kurtzman. I apologize for interrupting. I hope I
10 didn't break your train of thought. You had just
11 talked about the fourth guidepost.

12 MR. KURTZMAN: Yes, Your Honor. And I
13 think I concluded there, just talking about the
14 coordination between Mr. McAbee and Mr. Roberts.

15 The fifth is whether the defendant played
16 a leadership role in the events of January 6, 2021,
17 which I think I'll couple that a little bit with the
18 sixth and final guidepost, which is the defendant's
19 words and movements during the riot.

20 So whether the defendant played a
21 leadership role in the event, you know, I think we
22 need to sort of unpack the word of what leadership
23 system. The video evidence shows the defendant's
24 positioning within that riot.

25 THE COURT: He was right up in there;

1 right?

2 MR. KURTZMAN: Your Honor, he
3 (indiscernible) of the individuals attacking those
4 officers. He is not one amongst the crowd. He is the
5 lead element going in there. So whether or not he had
6 some formal leadership role within the organization, I
7 don't think there's any evidence that we can say that
8 that's the case, but typically in violent
9 altercations, the leaders are those up front that are
10 sort of leading the way for that.

11 Now, could there have been more
12 individuals more violent that day? I'm not
13 distinguishing that, but I think his positioning and
14 seeing that video shows him on the front end of that
15 advance. And then I think when you evaluate his words
16 and movements during the riot, he is all over those
17 officers. He is on top of them. He pulls one of the
18 officers down the stairs and another individual pulls
19 the other way. At one point he ends up on top of an
20 officer to the point that the chest worn body camera
21 is what captures Mr. McAbee.

22 THE COURT: Well, let's be clear. You
23 said he pulled one of the officers down the stairs.
24 The video evidence is inconclusive as to whether he
25 was pulling or falling down the stairs; fair?

1 MR. KURTZMAN: Your Honor, I -- I think
2 in my view of it, what is going on is Mr. McAbee is
3 unquestionably on top of an officer. I think we can
4 agree to that.

5 THE COURT: Yeah.

6 MR. KURTZMAN: The four hands -- when I
7 say pull, four hands on top of that officer, he can be
8 seen grabbing that officer's left leg, pulling him as
9 another individual is grabbing that officer's right
10 leg and pulling him. What I think happens at a
11 certain point is that Mr. McAbee ends up on top of
12 that officer while he's still being pulled down into
13 the crowd. And I think Mr. McAbee, for lack of a
14 better term, drug that officer down the stairs as he
15 was being pulled out in the crowd. I'm not saying he
16 pulled him out in the crowd --

17 THE COURT: Yeah.

18 MR. KURTZMAN: -- he was being pulled out
19 of the crowd and Mr. McAbee was on top of him, which I
20 think is a fair review of that without sort of more
21 high definition of what was going on that day.

22 THE COURT: I understand. Right.

23 MR. KURTZMAN: Your Honor, you look at
24 those videos that were introduced sort of a collective
25 Exhibit A, it's a tremendously violent scene. You've

1 got individuals in bulletproof vests throwing objects
2 at a line of officers, which based on the
3 (indiscernible) can only be five or six across. Those
4 officers are being pulled down, being stripped of
5 their equipment as individuals continue to throw
6 things. And then in later portions of the video, you
7 know, individuals straight up charging into the line
8 of officers in order to access the Capitol. So when
9 we look at the nature and circumstances of the
10 offense, I think that, based on all the factors I just
11 outlined and how (indiscernible), the nature and
12 circumstances of the offense lean toward detention.

13 When we look at the weight of the
14 evidence of dangerousness, as I mentioned a moment
15 ago, he was in the lead element trying to overcome the
16 Capitol police. He and an individual he worked with
17 openly talked in their text messages, joining the
18 Proud Boys and their affinity for that organization.

19 To look at his quote, which was
20 introduced in the text to Uncle Eddie -- as I say, we
21 evaluate the planning, execution and the aftermath.
22 On January 8, he said: I've shed blood for my country
23 by the hands of the swamp. I will shed much more in
24 the days to come. I will not forget the oath I swore
25 years ago to protect the America I once knew.

1 And that is not someone who was repentant
2 about what happened that day. That is someone
3 actively willing to engage in the exact type of
4 behavior --

5 THE COURT: That was January the 8th or
6 10th? What was the date of that?

7 MR. KURTZMAN: That was the January the
8 8th, Your Honor. And, Your Honor, I think when we
9 look at dangerousness, I think if we look at sort of
10 the entirety of Mr. McAbee and what was going on at
11 that time, he was a Williamson County sheriff. He
12 engaged in that violent action knowing that that
13 would, once uncovered, lead to him undoubtedly losing
14 his job. Didn't hesitate. He wasn't one amongst the
15 crowd. He was in the lead element of that crowd. And
16 I think that speaks strongly to the dangerousness.

17 Your Honor, I think the final factor as
18 we look at the indictment in which Mr. McAbee is a
19 codefendant, we've got seven other individuals. Those
20 individuals who, like Mr. McAbee, when they were
21 arrested were charged with a crime of violence and
22 detained. Peter Stager was detained. As the
23 government noted in its filing of supplemental
24 authority, Jeffrey Sabol was detained.

25 Other codefendants who were not charged

1 with a crime of violence have gotten home detention
2 enforced by GPS monitoring, but I think that's the
3 distinction is those individuals were not charged with
4 a crime of violence. They were charged under
5 18 United States Code Section 111(a); whereas,
6 Mr. McAbee is charged under (b) as well, which is what
7 turned it into a crime of violence. And notably, as
8 you compared Mr. McAbee to Mr. Sabol who the District
9 Court in DC ordered detained, Mr. McAbee and Mr. Sabol
10 are charged together in Counts Eight, Fifteen and
11 Seventeen of the indictment; and Mr. McAbee, Counts
12 Three and Seven are the same crimes that Mr. Sabol is
13 charged with, Your Honor.

14 So the government would contend that
15 Mr. McAbee should be detained pending trial. And that
16 if the Court would enter an order otherwise, the
17 government would ask for it to stay its order to allow
18 the United States to appeal to the District Court of
19 DC, particularly based on (indiscernible) with the
20 codefendant (indiscernible).

21 THE COURT: So you've talked about
22 Mr. Sabol's case and I've read the case, I've read the
23 other cases as well. I've read the DC circuit's
24 opinion in the case that I handled at this level
25 previously, the Munchel case. You're not suggesting

1 that I shouldn't perform an individualized
2 determination of detention as to Mr. McAbee and just
3 simply make my decision based on what happened to a
4 codefendant, should I?

5 MR. KURTZMAN: Not at all, Your Honor.

6 THE COURT: All right. And is it the
7 government's position that the question -- the issue
8 of whether someone should be detained should be
9 dependent upon what they're charged with and the
10 charge -- the charging decision that the United
11 States of America has made should determine whether or
12 not they are detained? That's not your position, is
13 it?

14 MR. KURTZMAN: No, Your Honor. And it
15 can't be. I mean, you know, there's certain charges
16 that aren't even eligible -- aren't even detention
17 eligible.

18 THE COURT: Right.

19 MR. KURTZMAN: It's not what you're
20 charged with. I think it goes more to, you know, as
21 we talk about those factors, it's the individualized
22 assessment of those factors as they apply to this
23 defendant, all sort of also in the lens of what he's
24 charged with. Which if he hadn't been charged with
25 the crime of violence, he wouldn't be here today.

1 So, no, I'm not arguing that just based
2 on a charging decision. He should be detained. I
3 think when you look at the individualized factors
4 related to the nature and circumstances of the
5 offense, when you look at those, the detention -- the
6 detention decision comes into focus, and I'd ask the
7 Court to conclude that he should be detained pending
8 trial.

9 THE COURT: In your -- in your motion for
10 detention, you discuss that the detention is
11 appropriate because, in part, that he has a compelling
12 incentive to flee, destroy evidence or intimidate
13 witnesses. Does the government believe that
14 Mr. McAbee's a flight risk?

15 MR. KURTZMAN: Your Honor, I'm looking at
16 the detention motion. Where is that portion that
17 you're referring to?

18 THE COURT: Page 20.

19 MR. KURTZMAN: Thank you. Your Honor,
20 your question was do I believe he's a flight risk?

21 THE COURT: Right. Is flight a basis for
22 detention in this case?

23 MR. KURTZMAN: Your Honor, to my
24 knowledge, Mr. McAbee returned following the violence
25 on January 6, he returned to his home in Tennessee,

1 which I believe his wife testified to the fact that
2 they've lived there for a number of years.

3 Now, while there is some evidence as
4 outlined in the detention motion to show that he
5 attempted to destroy some of the evidence related to
6 it, and largely electronic, in that it appears he took
7 down a lot of his social media following those events,
8 he did not, for instance, get rid of those metal
9 reinforced gloves. Those were recovered from his
10 house during the search warrant.

11 So to say he's a traditional flight risk,
12 i.e. he's going to flee the jurisdiction and go
13 somewhere else, I don't think the evidence presented
14 during his detention hearing presents a strong case
15 for that, Your Honor.

16 THE COURT: So the basis for detention
17 would be that he's a danger to the community; correct?

18 MR. KURTZMAN: Yes, Your Honor.

19 THE COURT: All right. And you've
20 already told me that it wouldn't be appropriate to
21 detain him based on what he's charged with. In fact,
22 the basis for detention is a preventive detention, to
23 assure that from now until the time he goes to trial,
24 the safety of the community is protected. Is that a
25 fair interpretation of the statutory scheme?

1 MR. KURTZMAN: Yes, Your Honor.

2 THE COURT: All right. What is the
3 danger that Mr. McAbee poses to the community between
4 now and the time he goes to trial in this case?

5 MR. KURTZMAN: Your Honor, I think a
6 recurrence of the events that occurred on January 6.
7 As the Court's aware, there's a protest scheduled for
8 I believe September 18 organized by individuals
9 seeking justice for those being prosecuted for the
10 events of January 6.

11 Mr. McAbee faced a similar circumstance
12 back in late December and early January. He only went
13 to exercise his First Amendment right, which he had
14 every right to do, but was at the front edge of a
15 violent assault of the United States Capitol, knowing
16 he was going to be fired as soon as Williamson County
17 found out about that, and not even a hesitation.

18 And so the idea that the Court could
19 impose some condition more significant than
20 employment, you know, which is how we keep a roof over
21 our head, to protect the community from similar acts,
22 I don't think can be done. If you present someone
23 with a situation where they're going to lose their
24 livelihood if they undertake a course of action and
25 yet they still do it, I don't think there's any

1 condition the Court can set that would ensure the
2 safety of the community.

3 THE COURT: These events happened on
4 January 6. Mr. McAbee was arrested sometime in late
5 August, if I recall correctly, almost -- what, almost
6 eight months later. During that eight months
7 Mr. McAbee wasn't under any conditions of release. I
8 haven't heard the government present any evidence of
9 any danger he posed to anybody during those eight
10 months. Do you have some evidence that you didn't
11 share with me?

12 MR. KURTZMAN: No, Your Honor. He wasn't
13 identified.

14 THE COURT: Well --

15 MR. KURTZMAN: (indiscernible) so I
16 don't -- I don't think there's evidence one way or the
17 other about what happened during that time.

18 THE COURT: Your detention motion says
19 that he was identified at the end of May of 2021. So
20 let's talk about that, then. How about from May of
21 2021 until his arrest in August of 2021, is there some
22 evidence of some danger he posed to the community that
23 you haven't shared with me that you're aware of?

24 MR. KURTZMAN: No, Your Honor. You're
25 correct. At the very end of May a tip was provided

1 that the individual in those Be On the Lookout photos
2 could have been Mr. McAbee. And then it appears from
3 the end of May to the beginning of June until his
4 arrest, the investigation determined that was, indeed,
5 him. And so I don't think there's any evidence of him
6 engaging in crimes of violence in between when he was
7 identified and now. So, no, I can't --

8 THE COURT: Well, okay. I understand
9 there's -- maybe you don't have any evidence of him
10 engaging in any crimes of violence, but what, if any,
11 danger can you tell me he posed to the community
12 during that period of time?

13 MR. KURTZMAN: Your Honor, the exact same
14 danger he posed on January 6 when he was a Williamson
15 County sheriff and before he engaged in the violent
16 assault on those officers. Mr. McAbee obviously had
17 some very strongly-held beliefs which led him to do
18 what he essentially admitted to doing in the Capitol
19 on January 6.

20 On January 8, rather than go to -- accept
21 what might have happened, he says he's ready to do it
22 again. He's ready to spill more blood for those --
23 for his beliefs. And those are the same beliefs that
24 led him to attack law enforcement on January 6. I
25 know I've said this before, but I'd just ask you to

1 believe him. That's what he said in a private
2 conversation. Why don't we believe him that he's
3 ready to spill more blood for those beliefs?

4 THE COURT: I guess because he didn't.
5 I've got -- I've got almost eight months where he had
6 no conditions whatsoever and you can't tell me a
7 single thing he did that endangered the community.

8 MR. KURTZMAN: Your Honor, I couldn't
9 have told you on December 31 that he was going to go
10 engage in an attack on the United States Capitol. I
11 think with those strong -- with the beliefs he has
12 expressed here, which he said whatever it is that he
13 has to fight for, he's prepared to engage in violence
14 to meet the ends of those beliefs.

15 I don't see anything to have him
16 renouncing those beliefs. I don't see anything -- he
17 didn't walk into the FBI office in Knoxville and say,
18 you know what, I was at the Capitol. I was wrong.
19 You guys got me --

20 THE COURT: Well, if he did, he would
21 have been turned away, wouldn't he? You didn't have
22 any charges on him; right? You can't surrender when
23 you're not charged with something, can you?

24 MR. KURTZMAN: Well, he would have been
25 interviewed. I've had individuals who were uncharged

1 (indiscernible) number of these cases. I've had
2 individuals who were uncharged (indiscernible) by law
3 enforcement, conduct an interview and then the FBI has
4 just said, you know, once we get an arrest warrant,
5 we'll come back and you can turn yourself in. But,
6 no, they wouldn't have turned him away. They would
7 have interviewed him, asked him about what happened
8 and what he did, and then charged him down the line.

9 THE COURT: Well, you're familiar with
10 the Fifth Amendment. He didn't have an obligation to
11 go do that, did he?

12 MR. KURTZMAN: Certainly not, Your Honor.

13 THE COURT: And that's not what you're
14 suggesting and you're not suggesting that he should be
15 detained because he didn't go in and voluntarily
16 confess to anything; right?

17 MR. KURTZMAN: Not at all, Your Honor. I
18 think our discussion was about the dangerousness
19 element. And you're saying (indiscernible) the point
20 being seven, eight months is the (indiscernible)
21 you're talking about, how do you know that -- how can
22 you say that he's still a danger to the community.

23 And my point being there is that the
24 evidence of the video and the text (indiscernible)
25 belief system, you see he's prepared for violence, we

1 see him engaged in violence, and then afterwards you
2 see him not walk back and renounce that, you see him
3 double down and say I'm ready to do it again when that
4 time arises. I don't think the Court or I can predict
5 when that time is going to arise. I couldn't have
6 predicted that January 6 would have arisen for him to
7 go attack another fellow law enforcement officer. I
8 couldn't have predicted that, but it happened.
9 He admitted it. He's on video. And I don't think I
10 could predict it now.

11 THE COURT: You admit that if I were to
12 impose conditions on his release that he submit to
13 home detention, electronic monitoring, that he not
14 participate in any rallies or events like the one you
15 referenced on September the 18th, that those
16 conditions, if followed, would protect the safety of
17 the community. You just don't think he would follow
18 those conditions because when his job was on the line,
19 he did what he did.

20 MR. KURTZMAN: Absolutely, Your Honor.

21 THE COURT: Okay.

22 MR. KURTZMAN: He -- I believe a sworn
23 law enforcement officer takes an oath, and a certain
24 part of that oath involves not breaking the law. I
25 would expect (indiscernible) assault another law

1 enforcement officer. So the idea that he would abide
2 by your conditions rather than the oath he swore to
3 become a law enforcement officer I don't think is
4 reasonable.

5 THE COURT: Okay. Thank you,
6 Mr. Kurtzman.

7 Mr. Gant.

8 MR. GANT: May it please the Court.
9 (indiscernible). It has appeared to me for a long
10 time that the real issue here is not flight but
11 danger. And in light of that, I want to focus my
12 comments in that regard.

13 First of all, one of the arguments that
14 Mr. Kurtzman makes in support of his position that
15 there are no conditions or combinations of conditions
16 that will assure the safety of the community or any
17 member of the community is that Mr. McAbee engaged in
18 conduct and he knew that while engaging in that
19 conduct he would lose his job.

20 Now, I'm old, but I don't remember any
21 testimony at this hearing in that regard. Now, maybe
22 what my friend Mr. Kurtzman is arguing is that there
23 is an inference that if a law enforcement officer
24 engages in certain kind of conduct, then there's a
25 likelihood that he or she may lose his job.

1 But in terms of evidence in the record in
2 this hearing, I haven't heard any evidence to suggest
3 that Mr. McAbee was on the verge of losing his job
4 because of his conduct in Washington, DC.

5 More importantly, Judge -- and, again, I
6 don't want to give Your Honor the idea that I'm just,
7 you know, glossing over the question of flight. I
8 think clearly that any view of the evidence that's
9 been presented thus far, there's a reasonable
10 suggestion that he does not pose a risk of running
11 off.

12 I mean, again, just like Your Honor's
13 pointed out, he had several months to do that. I
14 mean, if he wanted -- if he wanted to take off, and he
15 knew that there was reason to do so, he certainly had
16 time and the opportunity to do that.

17 But in terms of danger, again, looking
18 back at what the government has alleged in their
19 motion to detain, the motion suggests that Mr. McAbee
20 was the guy who was there wielding, you know, baseball
21 bats and throwing rocks and that kind of thing.

22 One of the things that Your Honor -- and
23 I'm sure you'd rather not do it, but if you go back
24 and you look at AW body worn cam and it's at 0.0032
25 where you see Mr. McAbee reach over and he picks up

1 this item, it looks like a baton, I think we all
2 concede that he did pick up the baton. But not one
3 time did you see him use it.

4 Now, again, Mr. McAbee is clearly up in
5 the front right there in the mouth of the tunnel and
6 he's involved in the pushing and shoving. There's no
7 question about that. But if Your Honor would look,
8 again, the AW body worn camera you will hear at 001 --
9 01:23 I think it is, You will hear the word no, quit
10 it. I'm trying to help you, man.

11 And if Your Honor will listen to that and
12 compare the voice of that individual with the voice
13 that you hear that we know is Mr. McAbee, I'd suggest
14 to you most respectfully, it sounds just like him. It
15 sounds just like McAbee saying I'm trying to help you,
16 man.

17 Counsel made a comment earlier, counsel
18 for the government, that I think it was that
19 photograph where you have Mr. McAbee leaning over the
20 officer and you see the vest and the sheriff and it
21 looks to me like it's him, but at one point it was
22 suggested by counsel for the government that
23 Mr. McAbee was on, leaning on the individual.
24 Certainly he wasn't because you couldn't get the
25 photograph -- the kind of photograph that you got

1 wouldn't have been possible if he'd been laying on
2 him.

3 But if Your Honor will go back and,
4 again, when you view AW body worn camera, what happens
5 is you get like three or four clips in one, but in the
6 third clip at 00:31, you will see that he's not
7 pulling the officer. He's got his hand on the leg,
8 but there is no action to suggest that he is pulling
9 the officer. Just before that particular portion of
10 the clip, you will see, again, 00:49 through 52, you
11 see clearly Mr. McAbee reaching over that -- excuse
12 me, that officer who's on the ground, reaching over
13 him, and then all of a sudden he wobbles back and they
14 slide down the stairs. But, again, all of this goes
15 to the question of whether or not he's a danger.

16 The thing that has troubled me, Judge,
17 about this whole episode, the government wants to say,
18 look, when you read these text messages and you look
19 at Mr. McAbee when he went to Washington, he went
20 there prepared to fight. And, again, I don't think
21 that it is, you know, too far of a stretch for anybody
22 to believe, look, if you're going to a Trump rally,
23 especially back in December and January, if you're
24 going to a Trump rally, there's probably going to be a
25 counter rally. And invariably there are fisticuffs.

1 Okay. So it would not be unusual for an individual to
2 go to such a rally knowing that there might be
3 fisticuffs and go prepared. I'm not saying he should
4 have, but it's not uncommon.

5 Next, there is this subliminal kind of
6 suggestion here, Judge, that, one, because some other
7 judge detained some of the other accused, you ought to
8 do that too. The more subliminal message is, look,
9 this guy, McAbee, he goes to Washington and he goes
10 there because of his beliefs. And as counsel said a
11 few moments ago, he has very heavily, strong -- pardon
12 me, very heavily-held strong beliefs. Well, that's
13 probably true. But you can't lock him up, you can't
14 hold him because of his beliefs.

15 Now, when you look at, again, these
16 videos that the government so heavily relies upon and
17 video CM body worn camera at 0.00:52, again -- and
18 it's just a repeat of 00:49 on the second clip of AW,
19 but it's a repeat. You can clearly see that it is
20 Mr. McAbee who is leaning over the police officer
21 before they slide down the steps.

22 One more significant video I'd ask
23 Your Honor to look at. And it's that last -- it's
24 S-a-j-u-m-o-n, I don't know how you pronounce it. But
25 at 0.00:17, you hear, hey, we got an officer down,

1 man. We got an officer down.

2 Again, if Your Honor listens to comments
3 and the voice of Mr. McAbee and compare that, hey,
4 man, we got an officer down, I suggest to you most
5 respectfully, sounds a great deal like it is
6 Mr. McAbee who's saying that.

7 Finally, at the end of that very same
8 clip, you see a Metropolitan police officer,
9 Metropolitan DC police officer and you've got
10 Mr. McAbee and he's trying to get into the tunnel.
11 And that's the clip where you see him point to his
12 vest and the word sheriff.

13 But what you do hear is -- and this is
14 right after you see Mr. McAbee go over and do the
15 assessment on this woman who is apparently in dire
16 need. But what you hear a Metro officer say to
17 Mr. McAbee, hey, man, thank you. We appreciate you.
18 01:19. Thank you, man. We appreciate you.

19 Excuse me, Judge, there's a little noise
20 out here. We're going to take care of it.

21 THE COURT: Thank you.

22 MR. GANT: Judge, next. There was a
23 comment made by my colleague, Mr. Kurtzman -- and
24 maybe I misunderstood him. But it had to do with the
25 crowd noise. Now, you know, when you hear the name

1 Proud Boys, there's kind of a flinch, kind of a
2 reaction. But if Your Honor goes and you look at the
3 text messages that make reference to PUS -- I think
4 it's PBUS, you'll note that in one of those text
5 messages. And it's Proud Boys US. And there's some
6 conversation between Mr. Michael Roberts and -- I'm
7 sorry, Judge.

8 THE COURT: That's all right. I can hear
9 you all right, Mr. Gant.

10 MR. GANT: There was some text messages
11 between Michael Roberts and Mr. McAbee. And you will
12 see Mr. McAbee spurns, he says, wait a minute, that
13 Proud Boys stuff, no, no, no, I went online and I
14 looked at it and it was some kind of antigovernment
15 organization. He rebuffs it. He rebuffs it.

16 Finally, Judge, couple things that I want
17 to say about what Your Honor has seen on these video
18 clips and what we know about the character of this
19 young man insofar as the people who have spoken about
20 his character.

21 Again, Your Honor goes back and you hear
22 that comment, I'm trying to help you, man. If you go
23 back and you look at that video where supposedly
24 Mr. McAbee is pulling the leg of the officer, if you
25 go back, Judge, and you look at that portion where

1 he's down doing the chest pumps to the woman, and if
2 you go back and you see and you hear, hey, we got an
3 officer down, man, those kinds of comments suggest
4 that this young man has the kind of character that you
5 heard these people talk about. He was trying to help.
6 He was there to help.

7 Now, (indiscernible) guideposts that are
8 suggested in Judge Sullivan's Sabol, I believe that's
9 how you pronounce it, Sabol opinion, what we know
10 about Sabol is that it's not Ronald McAbee case.
11 Sabol is a guy who prepared, bought tickets to
12 Switzerland and, you know, a number of things clearly
13 suggesting that he was gone.

14 Given we're not talking so much about
15 flight here as we are about danger to the community.
16 The one thing we do know, Judge, about this danger to
17 the community, the case law says very clearly that it
18 can't be just some suggested danger to the community.
19 It has to be a significant danger to the community.

20 And I suggest to you most respectfully,
21 what we know about Mr. McAbee from the time he got
22 back from Washington up to and including the time he
23 got arrested in this case, there was nothing, nothing
24 that he has done that would suggest that he is a
25 danger to the community. There is nothing that he has

1 done that suggests that he poses any danger to any
2 individual in the community.

3 And most importantly, counsel said, well,
4 look, Judge, he poses a danger because he could do in
5 September what he did back in January. Of course. He
6 could not do that. Again, just as counsel has said,
7 we don't know. We don't know. You don't know. But
8 the one thing we do know is this: We can't just lock
9 him up because, hmm, there's a possibility that he
10 might do this.

11 You could do that, Judge, only if there
12 are no conditions or combination of conditions that
13 would militate against that. You have available to
14 you some conditions that will militate against that.
15 And Your Honor's already identified them.

16 I've gone on much too long. But, Judge,
17 you have, having known Your Honor for some time, I
18 know you know you have an independent responsibility
19 to determine whether based on what you have heard thus
20 far warrants that drastic kind of action of pretrial
21 detention. And I suggest to Your Honor, you do have
22 available to you conditions, combinations of
23 conditions that I suggest to you most respectfully
24 will guarantee that this young man will not pose a
25 danger to the community or anyone else.

1 THE COURT: Mr. Gant, you addressed at
2 the outset Mr. Kurtzman's argument that I should not
3 believe that your client would follow any conditions I
4 might impose because he went to DC and engaged in the
5 conduct he allegedly engaged in there with an
6 understanding that he would lose his job. And if his
7 job wasn't enough to keep -- to keep him in line, so
8 to speak, that why could I -- why should I believe he
9 would follow any conditions. What's your argument as
10 to why I should be confident that he would comply with
11 any conditions I imposed?

12 MR. GANT: Well, one thing we know for
13 sure, Judge, is given his law enforcement experience,
14 there is some suggestion that he worked in corporate,
15 he knows the consequences of his failure to comply
16 with the conditions that you impose.

1 situation where he might have lost his job because he
2 engaged in the kind of conduct they allege he engaged
3 in.

4 (Indiscernible) Judge, he knows now that
5 if you release him and he violates the conditions, he
6 knows the consequences. He didn't have that kind of
7 situation when he was supposedly engaging in the
8 conduct in DC.

9 THE COURT: All right. Thank you,
10 Mr. Gant.

11 Mr. Kurtzman, I'll give you the last word
12 if you want it since it's the government's burden. I
13 don't know if you're talking right now, Mr. Kurtzman,
14 but you're muted.

15 MR. KURTZMAN: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. KURTZMAN: Yes, Your Honor, just
18 briefly. Just a couple points to counter I think what
19 may be a generous reading or inaccurate. Exhibit B
20 which we presented on page 36, Mr. McAbee asks what's
21 the password to the PBUSA, Proud Boy. Roberts's
22 response: I don't know, LOL. The next page on
23 page 37 of Exhibit B, that's Mr. McAbee saying: Oh, I
24 thought you were involved. So that's not him
25 renouncing it. I don't know where that reading comes

1 from.

2 The other mention of the Proud Boys comes
3 later in that outline where on page 59 of Exhibit B,
4 Mr. Roberts just says filled out papers -- or just
5 filled my papers out for PB, assume that means Proud
6 Boys based on the response of Mr. McAbee, which says:
7 You western chauvinist, LOL.

8 Your Honor, we then -- as we talked about
9 sort of the repercussions and the prospect for future
10 danger, page 7 in Exhibit B, where Mr. McAbee
11 discusses the DC police officer died from a fire
12 extinguisher to the head, at least that was his
13 understanding. Chief resigned because of the actions
14 they took Wednesday and complaining that we used metal
15 pipes, chemical irritants and other weapons against
16 them. Mr. Roberts responds there: Full of shit. To
17 which Mr. McAbee says: We held our ground after being
18 attacked.

19 So those videos entered as evidence are
20 Mr. McAbee's impression of him being attacked as he's
21 on the leading edge of that element.

22 THE COURT: You know, he pushed a police
23 officer, but he pushed that police officer after the
24 police officer pushed him; right?

25 MR. KURTZMAN: Your Honor, he's at the

1 lead edge of an element that's violently assaulting
2 and throwing stuff. The officer I don't think was
3 expecting to shake his hand at that moment.

4 THE COURT: Fair enough, but can you
5 answer my question?

6 MR. KURTZMAN: Which is he pushed the
7 officer after --

8 THE COURT: The officer pushed him,
9 right?

10 MR. KURTZMAN: After the officer -- after
11 the officer attempted to prevent him from entering the
12 Capitol illegally at the front of --

13 THE COURT: It's not that hard to say
14 yes, Mr. Kurtzman, is it? And the video of him over
15 the other officer, he never strikes the officer, does
16 he?

17 MR. KURTZMAN: Fair enough.

18 THE COURT: Never headbutts him. He
19 never took any offensive action against those
20 officers, did he? You've already talked about the
21 baton that he threw down. He didn't use the baton.
22 Even though he had that weapon in his hand, he didn't
23 use it against any of the officers, did he?

24 MR. KURTZMAN: Did he use the baton
25 against the officer, no. I think, Your Honor, if we

1 asked the law enforcement officer if someone in a
2 violent mob being on top of them and they were on
3 their back on the ground was concerning, I think they
4 would all agree that it was.

5 THE COURT: And I'm not suggesting it's
6 not concerning. I think there's so much about this
7 that's concerning. But there's a difference between
8 being concerning and being egregious, and I want to
9 make sure that we talk about the facts, and that's
10 what I'm asking you about. You can go ahead and
11 continue.

12 MR. KURTZMAN: Fair enough, Judge.

13 Your Honor, I think the photo on our
14 screen right now shows -- as we talk about those
15 beliefs and what he's willing to do, that's Mr. McAbee
16 the day after, posing, it appears to be proudly, next
17 to a newspaper that says Insurrection before a few
18 days later saying he shed blood for his country by the
19 hands of the swamp. And I'll shed more in the days to
20 come.

21 The idea that everything back home didn't
22 prevent Mr. McAbee from engaging in the conduct he
23 did, that somehow any conditions here would I think is
24 incorrect and would ask the Court to keep him detained
25 pending trial.

THE COURT: Is that it, Mr. Kurtzman?

2 MR. KURTZMAN: I'm sorry, yes,

3 Your Honor.

THE COURT: The Court's heard the proof
in this matter. It's before the Court on the
government's motion for detention pending trial in
this case. First of all, I want to thank the lawyers.
Appreciate your efforts, as always. You both did an
outstanding job representing your perspectives in the
case, and that is very important to the Court.

Also want to thank everyone for your
patience with the delays associated with completing
this hearing. And so thank you all for working
together to make sure that happened.

15 Also want to take a minute to acknowledge
16 Sarah McAbee, Ms. Gray, Mr. Nelson and Mr. Dickson for
17 your presence and appearance here today. And also the
18 number of character letters that the Court received.
19 I've reviewed all of those letters. Mr. Gant, just so
20 you know, I've also -- prior to today's hearing, I
21 went back and looked at the videos again and reviewed
22 those as well.

23 To those witnesses who provided
24 testimony, I want to thank you for your patience and
25 your participation here. I'm sure there's just about

1 anywhere you'd rather be than federal court, and so I
2 appreciate you being here. And thank you for your
3 testimony. Thank you for your willingness to serve
4 the Court in the capacities that you discussed in your
5 testimony.

6 I want to acknowledge that there are a
7 lot of people who come before this Court who don't
8 have anyone who shows up to support them or stand
9 behind them, and it means a lot to me that you-all
10 have been here and I want you to know that it's
11 recognized and not unnoticed. So thank you all for
12 that.

13 The Bail Reform Act ordinarily requires
14 that a defendant be released pending trial unless
15 there are no conditions that will reasonably assure
16 the appearance of the person at future court
17 proceedings and the safety of the community. The
18 Court, as the government notes, is to consider a
19 number of factors, including the nature and
20 circumstances of the offense charged, the weight of
21 the evidence against the defendant, the history and
22 characteristics of the defendant, and the nature and
23 seriousness of the danger posed by the defendant's
24 release.

25 In our society, liberty is the norm and

1 detention prior to trial or without trial is the
2 carefully limited exception. The Court's mindful of
3 the tension between the Bail Reform Act and the
4 presumption of innocence that applies to Mr. McAbee
5 and all individuals accused of criminal offenses.

6 I want to address first the issue of
7 flight. The government in its motion for detention
8 suggests that Mr. McAbee is a flight risk and that
9 detention would be appropriate for those reasons, as
10 he has this added incentive to flee, as the brief
11 notes -- or compelling incentive, rather, to flee,
12 destroy evidence or intimidate witnesses as noted on
13 page 20 of the government's motion.

14 I don't find that Mr. McAbee poses a
15 significant flight risk in this case. These events
16 occurred on January the 6th of 2021. Mr. McAbee
17 apparently came back home to his residence in
18 Tennessee over in Bedford County. There's no evidence
19 before the Court that he's been anywhere else or tried
20 to fly under cover of night or hide out or stay in a
21 hotel or otherwise avoid law enforcement or anyone
22 else. It appears he went back to his life as it was
23 before January the 6th and went about living there.

24 Likewise, the evidence suggests that
25 Mr. McAbee was -- continued in the employment of the

1 Williamson County Sheriff's Department until sometime
2 in March of 2021. So he went back to the same
3 residence, the same employer, the same family members,
4 and there's just no evidence to suggest that he made
5 any action to flee or that he would pose any risk of
6 flight or nonappearance in these court proceedings.

7 Furthermore, the Court believes that
8 there are conditions of release that would reasonably
9 assure his appearance at future court proceedings and
10 that those conditions could be imposed and would
11 adequately assure his presence at future proceedings.

12 Mr. McAbee has been indicted in this case
13 in the District of Columbia, and so probable cause is
14 not at issue.

15 With respect to the issue of
16 dangerousness as a basis for detention, this is a
17 difficult question, no doubt about it. The videos
18 that the Court has been provided and reviewed in the
19 context of these proceedings are -- there just really
20 aren't enough words to describe how troubling and
21 concerning they are. And those are just probably mild
22 terms for them. I think horrific and just -- just
23 awful when you review those. And it's -- it's
24 certainly understandable to see how that would
25 engender a degree of emotion in not only this decision

1 but any other decisions related to anything that has
2 to do with the events of January 6 at the Capitol.

3 But what I think is really important to
4 make clear for the record here is that the decision
5 that I have to make today is not a decision about
6 whether or not Mr. McAbee engaged in the conduct
7 that's alleged in the indictment or whether or not
8 Mr. McAbee is guilty of the conduct alleged in the
9 indictment or whether or not he should be punished for
10 the conduct that he allegedly engaged in as set forth
11 in the indictment or what punishment he should receive
12 for the conduct he allegedly engaged in as set forth
13 in the indictment.

14 The question I have to decide today is a
15 very narrow and specific question, and that is whether
16 or not there are conditions that will reasonably
17 assure the safety of the community if Mr. McAbee were
18 to be released in this case pending trial.

19 The government's acknowledged, rightfully
20 so, that it would be inappropriate for me to detain
21 Mr. McAbee based solely on his beliefs, to detain him
22 based solely upon the charges that have been brought
23 against him in the indictment or to detain him based
24 upon a belief that he engaged in the conduct that was
25 asserted in the indictment alone.

1 While that conduct is certainly a factor
2 and a consideration, I don't want to overstate the
3 government's position, detaining him simply because I
4 believe he did what he's charged with is not a
5 sufficient basis to order detention in this case.

6 Instead, the justification for detention
7 is what's known as preventative detention. In other
8 words, if I decide to detain him, it's because I
9 belief that he poses a danger to the community between
10 now and the time his case is resolved, and detention
11 is the only way to prevent that danger from occurring.

12 And that's extremely important because it
13 goes not only to the construction of the statute
14 itself, but it also goes to the fundamental
15 constitutional aspects of which our basis and our
16 system of justice is predicated.

17 We have a system that presumes innocence,
18 and for me to make a decision where I become judge,
19 jury and executioner all in the same role without
20 affording him the rights he's entitled to under the
21 constitution is inappropriate. And that's the
22 important distinction between the bond decision and
23 the decision on guilt that will follow at a trial.

24 It's important to note that in order for
25 a defendant to be preventively detained, the Court

1 must identify an articulable threat posed by the
2 defendant to an individual or to the community. Now,
3 that threat doesn't have to be physical violence
4 alone. It could extend to nonphysical harms, but it
5 must be a clearly identified threat. And the threat
6 must also be considered in context.

7 The determination has to be individually
8 made and, in the final analysis, must be based on
9 evidence before the Court regarding a particular
10 defendant. And it follows that whether a defendant
11 poses a particular threat depends on the nature of the
12 threat identified and the resources and capabilities
13 of the defendant.

14 That's extremely important because,
15 again, if I were to make this decision based solely on
16 emotion and looking at those videotapes and what's
17 alleged to have occurred, then I would be overstepping
18 the responsibility that I have to make an
19 individualized determination.

20 Similarly, if I were to make a decision
21 based upon what some other judge did for some other
22 defendant based on their individual circumstances, I
23 would be acting contrary to the law. I have to make
24 an individual decision to determine whether or not
25 Mr. McAbee poses a danger to the community and whether

1 there are any conditions that will reasonably assure
2 the safety of the community if he were to be released,
3 keeping in mind the Supreme Court's admonition that
4 detention is the exception and liberty is the norm.

5 So it's against that backdrop -- and
6 that's a very, very important backdrop. It's a
7 backdrop that's lost on many people. Many people see
8 those videos and they say, gosh, I see exactly what he
9 did, he needs to be thrown in jail. But that's just
10 not the decision that I have to make. That's a
11 decision for another day in another forum before
12 another fact finder. My decision today must be
13 whether or not he's a danger to the community and
14 whether or not there are conditions that will
15 reasonably assure the safety of the community.

16 The government's discussed the factors
17 that I have to consider. And I've considered those
18 factors. The Court finds the previous court rulings
19 that the government's referenced to be instructive and
20 helpful to those.

21 With regard to the nature and
22 circumstances of the offense charged, the Court must
23 find that the nature and circumstances of the offense
24 charged are serious and would generally warrant
25 detention in a case like this. Mr. McAbee was front

1 and center. He wasn't a person way back in the crowd
2 or somebody who showed up at the scene after all the
3 damage was done and then just went about his business
4 of whatever it was at the time.

5 But there's also contrary evidence that I
6 have to consider. There are the statements that
7 Mr. Gant alluded to that suggests that Mr. McAbee
8 wasn't present with an intention to do harm to the
9 officers; rather, he was there to provide aid and
10 assistance to individuals he saw who were in peril.
11 And certainly the video evidence of him providing life
12 support to an individual on the ground would
13 corroborate or substantiate Mr. Gant's position.

14 Likewise, I think it's relevant that,
15 again, without condoning or approving of Mr. McAbee's
16 conduct, the government's presented no evidence of any
17 offensive -- offensive actions on the part of
18 Mr. McAbee here. Mr. McAbee at one point has a baton,
19 he had a weapon he could use. He chose not to use
20 that weapon. There's no evidence that he ever did use
21 it.

22 He had the gloves that he wore, that's
23 the only sort of weapon that the government refers to
24 of him having in the midst of all of this. But
25 there's no evidence that I saw of him using those

1 knuckles to strike anyone. What I saw was him push a
2 police officer after the police officer pushed him.
3 Again, not to condone that conduct, but there's a
4 difference in context and degree between Mr. McAbee
5 responding to being pushed, reacting to being pushed
6 as opposed to being the instigator and initiator of
7 the pushing.

8 Similarly, there's the evidence of him
9 over another police officer. The Court's heard
10 conflicting information about what was happening
11 there. It's certainly a matter of interpretation, but
12 what I do know is that I never saw him strike that
13 officer or head butt that officer or do anything else
14 that would be an offensive maneuver against that
15 officer apart from being over him.

16 And, again, I'm not saying that him being
17 over him is okay. I'm saying in context and degree
18 it's something that becomes important to consider in
19 this case, where we're talking about these fine
20 details and points.

21 There's also some suggestion about him
22 using his status as a law enforcement officer to gain
23 entry. Again, respectfully, I believe that's a bit
24 overstated in the government's motion. It appears
25 that Mr. McAbee used his law enforcement position to

1 try to gain entry because he was injured and he was
2 trying to get out of the fray, not as a way to get in
3 to cause violence or danger or harm to anyone inside
4 the Capitol. And I've not been presented with any
5 evidence to the contrary of that.

6 With respect to the weight of the
7 evidence against the defendant, again, it's important
8 to know that this goes to the weight of the evidence
9 of dangerousness, not the evidence of guilt. And I
10 think the analysis is essentially the same as that
11 element as it is for the nature and circumstances of
12 the offense charged.

13 There's also the history and
14 characteristics of the defendant. And here, according
15 to the bond report, he has no prior record that I
16 would be aware of. He was in law enforcement, one
17 would suggest -- one would expect that he wouldn't
18 have any prior criminal record or anything of that
19 nature. The government's presented me with no
20 evidence of any prior dangerousness or violence from
21 his past or history.

22 He has strong ties to the community.
23 He's married, he has in-laws. He has the number of
24 folks that I mentioned who came here today to support
25 him and stand for him. And also provided a

1 significant number of letters that speak to his
2 character and the quality of his character. So I
3 think the history and characteristics of this
4 defendant weigh in favor of release.

5 I will note that his conduct as a law
6 enforcement officer, even just being there and being
7 in the midst of this is, again, concerning. But I
8 don't think it tips the scales in favor of detention
9 on this particular issue.

10 And then there's the ultimate question,
11 which is the nature and seriousness of the danger
12 posed by the defendant's release. I think that that
13 determination has to be made in concert between the
14 consideration of the factors, as well as conditions of
15 release that the Court could impose.

16 The government says that the danger that
17 I'm trying to prevent is the danger that Mr. McAbee
18 would engage in this behavior or similar behavior in
19 the future. They say that because he engaged in the
20 behavior on January the 6th with a belief, knowledge
21 or understanding that it would cost him his job, that
22 that's evidence that he wouldn't comply with my
23 orders.

24 To paraphrase Winston Churchill, the true
25 measure of a civilized society is how it treats those

1 accused of a crime. And as I mentioned at the outset,
2 it would be extremely easy and certainly
3 understandable for one to want to make a decision
4 about detention based on emotion, based upon what was
5 in those videos and a belief that that deserves to be
6 punished and that he deserves to be detained for
7 those -- those actions. But that's simply not what I
8 can do and not what the law requires me to do.

9 Notwithstanding my findings with regard
10 to the factors in this particular case, I do not
11 believe that Mr. McAbee poses a future danger to the
12 community if he were to be released between now and
13 the time that he resolves this case.

14 That's based upon the discussion I've
15 already had, and it's also based upon the fact that
16 Mr. McAbee has been effectively in the community with
17 no conditions whatsoever with the same conduct that
18 the government's pointing to now, with the same
19 alleged ideas and motivations that the government
20 points to now for almost eight months.

21 And the government, despite my request
22 that they provide me any evidence that he's presented
23 any sort of a danger to the community, have been able
24 to point to absolutely nothing beyond the events
25 around and during January the 6th.

1 And while those events, there will be a
2 reckoning for that and there will be a time at which
3 he is held to account for those and stands trial for
4 those, that's simply not the issue I have to decide
5 today. And I think that given the fact that he was in
6 the community for the period of time that he's been in
7 the community, that the government's been able to
8 point to absolutely no danger that he's created or
9 caused in the community and the Court's not aware of
10 any and he's done that all with absolutely no
11 conditions on him, that there's reason to believe that
12 he would not pose a danger to the community by his
13 continued release.

14 The government points out the fact that
15 he was unknown to them for a period of time, but as I
16 addressed in the government's motion, on or about
17 May 26, 2021, the FBI was provided information about
18 Mr. McAbee of Roane County, Tennessee, describing
19 where he lived; provided information -- provided the
20 name of his spouse; advised that he worked as a
21 sheriff's deputy and provided the name of a law
22 enforcement agency that he worked for; that he'd
23 relocated to Tennessee; and that he deleted a Facebook
24 account. May the 26th. It's not until late August
25 before he's arrested by the government in this

1 particular case.

2 It's not to say the government's position
3 is inappropriate or incredible, but the fact that they
4 knew about him, were able to track down the tips, had
5 the level of specificity of who he was and how he
6 could be found and chose to let him stay out in the
7 community for almost 90 days, I have a hard time
8 believing that the government perceives him to be that
9 much of a threat either, leaving him out when they
10 knew about him during that period of time.

11 The government ultimately obtained an
12 indictment, but certainly there's nothing that
13 prevented them from getting an arrest warrant for him
14 by way of a criminal complaint. They have done that
15 with other folks charged in these cases. So I think
16 that that's a consideration and a factor as well that
17 suggests that Mr. McAbee's release does not pose a
18 danger to the community.

19 It's also important to note that while,
20 again, the text messages that I've been provided are
21 troubling and concerning, they really end in January
22 the 10th. The government didn't provide me with
23 anything else despite having access to his phone that,
24 I would note, he voluntarily provided to them. And
25 there's just simply nothing to support this idea that

1 he's continually affiliated with the Proud Boys or any
2 other antigovernment organization; that he otherwise
3 presents some danger to the community. And even if
4 the government believes that, they certainly waited a
5 while to decide to go and arrest him.

6 I know those are decisions that the
7 government has to make and I'm not questioning you
8 those, but I think they're important factors and
9 considerations, and I'm giving them the weight that I
10 think that they deserve to be given in this case.

11 So having made that finding, the real
12 question is when I balance those things, those things
13 being my findings with respect to the factors and my
14 finding with respect to the danger I believe he poses
15 prospectively to the community, there are conditions
16 of release that will reasonably assure the safety of
17 the community.

18 Well, the government's identified the
19 danger that they believe is that I guess he's going to
20 participate in some sort of antigovernment overthrow
21 efforts and violence against police officers and law
22 enforcement.

23 There are ways that I can -- there are
24 conditions that I can impose that would safeguard
25 against those things happening. Mainly, I can impose

1 the condition that he not participate in any of those
2 kinds of activities. I can order that he submit to
3 electronic monitoring and home detention, and I can
4 provide limitations on his access to the Internet to
5 review similar things of that nature.

6 And the question then becomes, is -- will
7 he comply with those conditions. The government says
8 he won't because he did what he allegedly did on
9 January the 6th knowing it would implicate his job.
10 Respectfully, I don't think that that's the measure.

11 And to counterbalance that speculation --
12 and as Mr. Gant notes, it's only speculation by the
13 government. To counterbalance that, I've got all
14 these letters of reference. I've got Ms. McAbee and
15 Ms. Gray, Mr. Dickson, Mr. Nelson talking about
16 Mr. McAbee in a way that when I balance the
17 government's speculation against the information that
18 Mr. Gant's presented by way of these character
19 witnesses suggests to me that Mr. McAbee would comply
20 with these conditions.

21 And I can impose the conditions when I
22 consider the threat and the context of the threat and
23 the manner in which this threat came to be, I can
24 reasonably assure the safety of the community. And I
25 can do that free of emotion, without making a judgment

1 about whether he's guilty or not and whether he should
2 be punished or not. All I have to decide is whether
3 he's a danger to the community and whether there are
4 conditions that will reasonably assure the safety of
5 the community.

6 For all the reasons that I've discussed,
7 I find that there are conditions of release that will
8 reasonably assure the safety of the community; and,
9 therefore, it will be the order of the Court that
10 Mr. McAbee be released subject to the following
11 conditions.

12 The defendant must not violate federal,
13 state or local law while on release. The defendant
14 must advise the Court or pretrial services in writing
15 before making any change of residence or telephone
16 number. The defendant must appear in court as
17 required and, if convicted, must surrender as directed
18 to serve a sentence that the Court may impose.

19 Additionally, the defendant will be
20 placed in the custody of Sarah McAbee at their home
21 address. Ms. McAbee agrees to supervise the
22 defendant, to use every effort to assure his
23 appearance at court proceedings, to notify the Court
24 immediately if he violates the condition of release or
25 is no longer in her custody. He'll also be required

1 to submit to supervision by and report for supervision
2 to pretrial services as directed. He is to -- and
3 weekly contacts will be required. At a minimum he's
4 to continue or actively seek employment. He is to
5 surrender any passport that he may have to the
6 United States District Court clerk. He's not to
7 obtain a passport or other international travel
8 documents.

9 He's to abide by the following
10 restrictions on personal association, residence or
11 travel. It will be within the Middle District of
12 Tennessee and Eastern District of Tennessee unless
13 preapproved by pretrial services. The defendant may
14 not travel outside of the continental United States
15 without Court approval.

16 The defendant must participate in all
17 future proceedings as directed and the defendant may
18 not go to Washington, DC unless he is appearing for
19 court, meeting with pretrial services or consulting
20 with his attorney. He is to avoid all contact
21 directly or indirectly with any person who is or may
22 be a victim or witness in the investigation or
23 prosecution, including any codefendant.

24 He's not to possess a firearm or other
25 dangerous device or other weapon. He's not to use

1 alcohol excessively. He may not use or unlawfully
2 possess a narcotic drug or other controlled substance
3 defined by law unless prescribed by a licensed medical
4 practitioner. He's to submit to testing for
5 prohibited substance if required by pretrial services
6 or the supervising officer, and that testing may be
7 used with random frequency, may include urine testing,
8 the wearing of a sweat patch, remote alcohol testing
9 system and/or any form of prohibited substance
10 screening or testing. And he must not obstruct,
11 attempt to obstruct or tamper with the efficiency and
12 accuracy of prohibited substance screening or testing.

13 And he's to participate in a program of
14 inpatient or outpatient substance abuse therapy and
15 counseling if directed by pretrial services. He's to
16 participate in the following location restriction
17 program, home detention, meaning he'd be restricted to
18 his residence at all times except for employment,
19 education, religious services, medical, substance
20 abuse or mental health treatment, attorney visits,
21 court appearances, Court-ordered obligations or other
22 activities approved in advance by the pretrial
23 services office or supervising officer. He's to
24 submit to location monitoring as directed by pretrial
25 services and comply with all the program requirements.

1 He must pay all or part of the cost of the program
2 based on his ability to pay as determined by pretrial
3 services office or supervising officer.

4 He's to report as soon as possible,
5 within 48 hours, to the pretrial services officer
6 every contact with law enforcement personnel,
7 including arrests, questioning or traffic stops. He's
8 to permit pretrial services to visit him at home or
9 elsewhere at any time and allow the officer to
10 confiscate any contraband in plain view. He's also to
11 refrain from using any social media or other websites
12 related to insurrection activity.

13 Also need to advise Mr. McAbee of the
14 following penalties and sanctions: Violating any of
15 the foregoing conditions of release may result in the
16 immediate issuance of a warrant for your arrest, a
17 revocation of your release, an order of detention and
18 a prosecution for contempt of court and could result
19 in imprisonment, a fine or both.

20 While on release if you commit a federal
21 felony offense, the punishment's an additional prison
22 term of not more than 10 years. And for a federal
23 misdemeanor offense, the additional prison term of not
24 more than one year. This sentence will be
25 consecutive, meaning in addition, to any other

1 sentence you receive. It's a crime punishable by up
2 to ten years in prison, \$250,000 fine or both to
3 obstruct a criminal investigation, tamper with a
4 witness, victim or informant, retaliate or attempt to
5 retaliate against a witness, victim or informant, or
6 intimidate or attempt to intimidate a witness, victim,
7 juror, informant or officer of the Court.

8 The penalties for tampering, retaliation
9 or intimidation are significantly more serious if they
10 involve a killing or attempted killing.

11 If after release you knowingly fail to
12 appear as the conditions of release require or
13 surrender to serve a sentence, you may be prosecuted
14 for failure to appear or surrender, and additional
15 punishment may be imposed.

16 If you're convicted of an offense
17 punishable by a term of imprisonment of 15 years or
18 more, you'd be fined not more than \$250,000,
19 imprisoned not more than ten years or both. For a
20 misdemeanor you'd be fined not more than \$100,000,
21 imprisoned for not more than one year or both. And
22 any term of imprisonment imposed for failure to appear
23 or surrender will be consecutive to any other sentence
24 that you receive.

25 Ms. McAbee, are you still there?

1 THE DEFENDANT: Mr. or Ms. McAbee, sir?

2 THE COURT: Ms. McAbee. Sarah McAbee.

3 MS. McABEE: Yes, I am.

4 THE COURT: Ms. McAbee, I need to ask you
5 a couple of questions. First, did you hear the
6 conditions of release that I just reviewed?

7 MS. McABEE: Yes, sir.

8 THE COURT: Do you agree to supervise
9 Mr. McAbee?

10 MS. McABEE: Yes, sir.

11 THE COURT: To use every effort to assure
12 his appearance at all court proceedings?

13 MS. McABEE: Yes, sir.

14 THE COURT: And to notify the Court
15 immediately if he violates a condition of release or
16 is no longer in your custody?

17 MS. McABEE: Yes, sir.

18 THE COURT: All right. Very well. Thank
19 you.

20 Mr. Gant, if you'd have Ms. McAbee
21 execute the document at your convenience, please.

22 Mr. McAbee, I need to ask you some
23 questions as well. Do you acknowledge you're the
24 defendant in this case and that you're aware of the
25 conditions I just reviewed with you?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: You promise to obey all
3 conditions of release, to appear as directed and
4 surrender to serve any sentence that might be imposed?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And that you're aware of the
7 penalties and sanctions set forth in the document that
8 I just reviewed?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. This will be the order
11 of the Court. Mr. McAbee will be released subject to
12 these conditions following any processing that may be
13 required by the marshals in this matter.

14 Mr. Kurtzman, do you have a motion?

15 MR. KURTZMAN: Yes, Your Honor. The
16 government would move the Court to stay the entry of
17 the order you just outlined to allow the United States
18 to appeal.

19 THE COURT: How long do you want me to
20 stay it?

21 MR. KURTZMAN: Your Honor, we're prepared
22 to file the appeal paperwork today, and then I expect
23 the District Court in DC will pick it up shortly
24 thereafter. So I'll file the appeal today. I can't
25 necessarily promise when the DC court will pick it up.

1 I will note that the statute says that must be dealt
2 with promptly, so I would imagine within the next 48
3 hours, if not sooner, once our paperwork is filed on
4 the appeal that the District Court in DC will outline
5 a schedule for hearing that appeal.

6 THE COURT: I'll stay it until 5 o'clock
7 Friday.

8 MR. KURTZMAN: Thank you, Your Honor.

9 THE COURT: Mr. Gant, anything further
10 for Mr. McAbee?

11 MR. GANT: No, Your Honor. Thank you
12 much for your patience.

13 THE COURT: Thank you, everyone.

14 Mr. McAbee, Mr. Gant will explain to you what's
15 happened. I've entered my order. But I've agreed to
16 stay my order pending the appeal to the District
17 Court, which the government has indicated they'll be
18 filing today. And I think that does it.

19 Mr. Kurtzman, anything further from the
20 government's standpoint we need to do today?

21 MR. KURTZMAN: No, sir.

22 THE COURT: Mr. Gant, anything else for
23 your client?

24 MR. GANT: No, Your Honor. Thank you.

25 THE COURT: Very good. Thank you all.

1 We'll be in recess.

2 *****END OF ELECTRONIC RECORDING*****

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REPORTER'S CERTIFICATE

I, Roxann Harkins, Official Court Reporter
for the United States District Court for the Middle
District of Tennessee, in Nashville, do hereby
certify:

That I transcribed from **electronic recording** the proceedings held via video conference on August 26, 2021 and September 8, 2021, in the matter of UNITED STATES OF AMERICA v. RONALD MCABEE, Case No. 3:21-mj-2956;

that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript is a true and accurate transcript of said proceedings.

This is the 20th day of September, 2021.

s/ Roxann Harkins
ROXANN HARKINS, RPR, CRR
Official Court Reporter